

# Civil and Administrative Tribunal Act 2013 No 2

[2013-2]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Passenger Transport Act 2014 No 46](#) (not commenced)
  - [Conversion Practices Ban Act 2024 No 19](#) (not commenced — to commence on 4.4.2025)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Civil and Administrative Tribunal Act 2013 No 2



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# Civil and Administrative Tribunal Act 2013 No 2



New South Wales

An Act to establish the Civil and Administrative Tribunal of New South Wales and to provide for its membership and functions.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Civil and Administrative Tribunal Act 2013*.

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Objects of Act

The objects of this Act are—

- (a) to establish an independent Civil and Administrative Tribunal of New South Wales to provide a single point of access for most tribunal services in the State, and
- (b) to enable the Tribunal—
  - (i) to make decisions as the primary decision-maker in relation to certain matters, and
  - (ii) to review decisions made by certain persons and bodies, and
  - (iii) to determine appeals against decisions made by certain persons and bodies, and
  - (iv) to exercise such other functions as are conferred or imposed on it, and
- (c) to ensure that the Tribunal is accessible and responsive to the needs of all of its users, and
- (d) to enable the Tribunal to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible, and
- (e) to ensure that the decisions of the Tribunal are timely, fair, consistent and of a high quality, and

- (f) to ensure that the Tribunal is accountable and has processes that are open and transparent, and
- (g) to promote public confidence in tribunal decision-making in the State and in the conduct of tribunal members.

#### 4 Definitions

(1) In this Act—

**administrative review application, administrative review decision, administrative review jurisdiction, administratively reviewable decision** and **administrator**—see section 30.

**administrator**, of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the [Children and Young Persons \(Care and Protection\) Act 1998](#).

**ancillary decision** of the Tribunal means a decision made by the Tribunal under legislation (other than an interlocutory decision of the Tribunal) that is preliminary to, or consequential on, a decision determining proceedings, including—

- (a) a decision concerning whether the Tribunal has jurisdiction to deal with a matter, and
- (b) a decision concerning the awarding of costs in proceedings.

**appeal jurisdiction** of the Tribunal—see section 28(2)(c).

**Appeal Panel** means an Appeal Panel of the Tribunal.

**appealable external decision**—see section 31.

**application** to the Tribunal—see section 39.

**authorised official**—see section 75.

**civil penalty** means a monetary or pecuniary penalty that is imposed on a person (except as punishment for an offence) for a contravention of either a provision of legislation or an order or other decision of a person or body.

**civil penalty provision** of this Act—see section 77.

**decision**—see section 5.

**decision-maker**—see section 6.

**Deputy President** means a Deputy President of the Tribunal.

**Division** of the Tribunal means a Division of the Tribunal specified in section 16(1).



**Division Head** of a Division of the Tribunal means the member who is appointed by or under this Act as the Division Head of that Division.

**Division List** means a list established by or under this Act for the management of a class of proceedings allocated to a Division of the Tribunal.

**Division member**, in relation to a Division of the Tribunal, means a member who is assigned by or under this Act to that Division.

**Division Schedule** for a Division of the Tribunal—see section 17.

**enabling legislation** means legislation (other than this Act or any statutory rules made under this Act) that—

- (a) provides for applications or appeals to be made to the Tribunal with respect to a specified matter or class of matters, or
- (b) otherwise enables the Tribunal to exercise functions with respect to a specified matter or class of matters.

**enforcement jurisdiction**—see section 33.

**establishment day**—see section 7.

**external appeal** and **external appeal jurisdiction**—see section 31.

**external decision-maker** means a decision-maker who is external to the Tribunal.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general application, general decision** and **general jurisdiction**—see section 29.

**general member** means a general member of the Tribunal.

**Guardian Ad Litem Panel** has the same meaning as in the [Children and Young Persons \(Care and Protection\) Act 1998](#).

**interlocutory decision** of the Tribunal means a decision made by the Tribunal under legislation concerning any of the following—

- (a) the granting of a stay or adjournment,
- (b) the prohibition or restriction of the disclosure, broadcast or publication of matters,
- (c) the issue of a summons,
- (d) the extension of time for any matter (including for the lodgment of an application or appeal),

- (e) an evidential matter,
- (f) the disqualification of any member,
- (g) the joinder or misjoinder of a party to proceedings,
- (h) the summary dismissal of proceedings,
- (h1) the granting of leave for a person to represent a party to proceedings,
- (i) any other interlocutory issue before the Tribunal.

**internal appeal, internal appeal jurisdiction** and **internally appealable decision**—see section 32.

**legislation** means an Act or a statutory rule.

**List Manager** for a Division of the Tribunal—see section 19.

**member** means a member of the Tribunal.

**non-presidential member**—see section 9(3).

**NSW judicial officer** means any of the following—

- (a) a Magistrate,
- (b) a Judge of the District Court,
- (c) a judicial member of the Industrial Relations Commission,
- (d) a Judge of the Land and Environment Court,
- (e) a Judge of the Supreme Court.

**occasional member**—see section 9(5).

**President** means the President of the Tribunal.

**presidential member**—see section 9(2).

**principal member** means a principal member of the Tribunal.

**principal registrar** means the person employed in the Public Service as the principal registrar of the Tribunal.

**procedural rules** means each of the following—

- (a) the Tribunal rules,
- (b) the regulations in their application to the practice and procedure of the Tribunal.

**Note—**

Section 25(5) provides that in the event of an inconsistency between a provision of the regulations and a provision of the Tribunal rules, the provision of the regulations prevails to the extent of the inconsistency.

**registrar** means the principal registrar or any other person employed in the Public Service as a registrar of the Tribunal.

**resolution process**—see section 37.

**Rule Committee** means the Rule Committee of the Tribunal.

**senior member** means a senior member of the Tribunal.

**term member**—see section 9(4).

**the Tribunal** or **NCAT** means the Civil and Administrative Tribunal of New South Wales established by this Act.

**Tribunal rules** means the rules of the Tribunal made by the Rule Committee.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act (however expressed) to the exercise by the Tribunal of its functions in relation to other legislation includes a reference both to its functions under the legislation and its functions under this Act in relation to the legislation.
- (3) A reference (however expressed) in this Act to a decision made under other legislation is taken to include a reference to any decision made in the exercise of functions identified by the legislation.
- (4) Any provisions of this Act that are expressed to be subject to the procedural rules have effect subject to any exceptions, limitations or other restrictions specified by the procedural rules.
- (5) Subject to section 17(3), procedural rules that make provision as referred to in subsection (4) are not inconsistent with this Act.

**Note—**

Section 17(3) provides that the provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or the provisions of the procedural rules. See also item 23 of Schedule 7. Also, the procedural rules cannot be inconsistent with enabling legislation. See sections 25(1) and 90(2)(a).

- (6) A reference in this Act to the [Administrative Decisions Review Act 1997](#) is a reference to the [Administrative Decisions Tribunal Act 1997](#), as renamed and amended, on and from the establishment day.

**Note—**

See the amendments made by Schedule 2 (Repeal and amendment of certain legislation relating to Administrative Decisions Tribunal) to the *Civil and Administrative Tribunal Amendment Act 2013*.

(7) Notes included in this Act do not form part of this Act.

## 5 Meaning of “decision”

(1) In this Act, **decision** includes any of the following—

- (a) making, suspending, revoking or refusing to make an order or determination,
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission,
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument,
- (d) imposing a condition or restriction,
- (e) making a declaration, demand or requirement,
- (f) retaining, or refusing to deliver up, an article,
- (g) doing or refusing to do any other act or thing.

(2) For the purposes of this Act—

- (a) a decision is made under enabling legislation or this Act if it is made in the exercise (or purported exercise) of a function conferred or imposed by or under the enabling legislation or this Act, and
- (b) a decision that purports to be made under enabling legislation or this Act is taken to be a decision made under the enabling legislation or this Act even if the decision was beyond the power of the decision-maker to make, and
- (c) a refusal of a decision-maker to make a decision under enabling legislation or this Act because the decision-maker considers that the decision concerned cannot lawfully be made under the enabling legislation or this Act is taken to be a decision made under the enabling legislation or this Act to refuse to make the decision requested, and
- (d) a failure by a decision-maker to make a decision within the period specified by enabling legislation or this Act for making the decision is taken to be a decision by the decision-maker at the end of the period to refuse to make the decision.

## 6 Meaning of “decision-maker”

(1) For the purposes of this Act, the **decision-maker** in relation to a decision is the person or body that makes (or is taken to have made) the decision for the purposes of enabling legislation or this Act.

- (2) The person or body specified by enabling legislation as a person or body whose decisions are reviewable or appealable is taken to be the only decision-maker in relation to the making of such a decision even if some other person or body also had a role in the making of the decision.

## **Part 2 Establishment of Tribunal**

### **Division 1 Establishment and membership**

#### **7 Establishment of Civil and Administrative Tribunal**

- (1) The Civil and Administrative Tribunal of New South Wales (which may also be called **NCAT**) is established by this Act on the establishment day.
- (2) The **establishment day** is—
  - (a) 1 January 2014, or
  - (b) such later day as may be fixed as the establishment day by a proclamation made under this section.
- (3) The Governor may, by proclamation published on the NSW legislation website, fix a day that is later than 1 January 2014 as the establishment day for the purposes of this section.
- (4) The Governor may, by further proclamation published on the NSW legislation website, revoke a previous proclamation fixing a day as the establishment day and fix a different day that is later than 1 January 2014 as the establishment day.
- (5) A proclamation under this section has effect only if published before the establishment day applying for the time being.

#### **8 Appointments and other matters to facilitate establishment of Tribunal**

- (1) A person may be appointed to any office or other position under this Act before the establishment day.
- (2) Without limiting subsection (1), the following appointments may be made before the establishment day—
  - (a) appointment as the President or as any other kind of member,
  - (b) appointment as a Division Head of a Division of the Tribunal that will be created on the establishment of the Tribunal,
  - (c) appointment as a List Manager of a Division of the Tribunal that will be created on the establishment of the Tribunal,
  - (d) appointment as a member of the Rule Committee,

- (e) appointment as a registrar (including as the principal registrar) or other member of staff of the Tribunal.
- (3) A member appointed before the establishment day may also be assigned by or under this Act to a Division of the Tribunal that will be created on the establishment of the Tribunal.
- (4) Without limiting subsections (1) and (2), the Rule Committee may be constituted before the establishment day and may before that day—
  - (a) meet and transact business as if the Tribunal (and its Divisions) had been established, and
  - (b) without limiting paragraph (a), make Tribunal rules that will come into force on or after the establishment day.
- (5) Any appointment or assignment made before the establishment day has effect on and from the day specified in the instrument of appointment or assignment as the date of appointment or assignment as if the Tribunal (including its Divisions) had been established.
- (6) Despite clause 5 of Schedule 2, a member of an existing tribunal (within the meaning of Part 2 of Schedule 1) who is appointed as a member of the Tribunal before the establishment day is not entitled to be paid remuneration as a member of the Tribunal while he or she continues to receive remuneration as a member of the existing tribunal.

## **9 Membership of Tribunal**

- (1) The Tribunal is to consist of the following members—
  - (a) the President,
  - (b) Deputy Presidents,
  - (c) principal members,
  - (d) senior members,
  - (e) general members.
- (2) The President and the Deputy Presidents are referred to in this Act as **presidential members**.
- (3) The principal members, senior members and general members are referred to in this Act as **non-presidential members**.
- (4) A member appointed by or under this Act for a term is referred to in this Act as a **term member**.

- (5) A member appointed by or under this Act to be a member for the purposes of specified proceedings is referred to in this Act as an ***occasional member***.
- (6) The President is to be appointed as a term member.
- (7) Schedule 2 sets out additional provisions with respect to members.

## **10 Appointment of term members**

- (1) A person may be appointed as a term member if the person is qualified to be appointed as a member of the kind concerned.

**Note—**

Section 13 makes general provision with respect to qualifications for appointment. A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that Division based on particular skills, expertise or qualifications.

- (2) A presidential member appointed as a term member is to be appointed by the Governor by commission under the public seal of the State.

**Note—**

The President must be appointed as a term member. See section 9(6).

- (3) A non-presidential member appointed as a term member is to be appointed by the Minister by written instrument.
- (4) The instrument of appointment of a term member is to specify—
  - (a) whether the member has been appointed as the President, a Deputy President, principal member, senior member or general member, and
  - (b) the term for which the member has been appointed.
- (5) A term member may be appointed on a full-time basis or a part-time basis.
- (6) However, the President is taken to be appointed on a full-time basis.

## **11 Appointment of occasional members**

- (1) The President may, by written instrument, appoint a person to be an occasional member in relation to particular proceedings before the Tribunal if—
  - (a) the person is qualified to be appointed as a member of the kind concerned, and
  - (b) the President is satisfied that the appointment of the person as a member is necessary to enable the Tribunal to be properly constituted to exercise its functions in the proceedings.

**Note—**

Section 13 makes general provision with respect to qualifications for appointment. A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that

Division based on particular skills, expertise or qualifications.

- (2) Without limiting clause 12 of Schedule 2, the President may delegate the function of appointing occasional members to sit as Division members for a Division of the Tribunal to the Division Head of the Division or a List Manager of a Division of the Tribunal.
- (3) The instrument of appointment of an occasional member is to specify—
  - (a) whether the member has been appointed as a Deputy President, principal member, senior member or general member, and
  - (b) the proceedings in relation to which the member has been appointed as an occasional member.
- (4) An occasional member who is appointed to be a member in relation to proceedings that are allocated to a Division of the Tribunal is taken to be assigned as a Division member of that Division.
- (5) A person who is appointed as an occasional member holds office as such until the proceedings in relation to which the member has been appointed as an occasional member have been finally determined, unless the person sooner vacates office.
- (6) The proceedings in relation to which an occasional member has been appointed as an occasional member are not **finally determined** for the purposes of subsection (5) until—
  - (a) the proceedings are withdrawn by a party before the substantial merits of the proceedings are considered by the Tribunal, or
  - (b) the proceedings are dismissed by the Tribunal (as constituted by or with the member) before the substantial merits of the proceedings are considered by the Tribunal (including, where required, the giving of reasons for the dismissal and the determination of costs), or
  - (c) the Tribunal (as constituted by or with the member) has completed all the processes necessary to decide the substantial merits of the proceedings (including, where required, the giving of reasons for the decision and the determination of costs),

whichever occurs first.

## **12 Appointment of acting members for a period**

- (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Deputy President a person qualified for appointment as a Deputy President if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.



- (2) The Minister may, by written instrument, appoint as an acting principal member, acting senior member or acting general member a person qualified for appointment as a principal member, senior member or general member (as the case requires) if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.
- (3) The person's appointment is for the period (not exceeding 12 months) specified in the instrument of appointment.
- (4) An Acting Deputy President, acting principal member, acting senior member or acting general member has the functions of, and is taken to be, a Deputy President, principal member, senior member or general member (as the case requires) subject to any conditions or limitations specified in the instrument of appointment.

### **13 Qualifications of members**

- (1) **The President** A person is qualified to be appointed as the President only if the person is a Judge of the Supreme Court.
- (2) However, the Minister may not recommend the appointment of a person as the President unless the Minister has consulted with the Chief Justice of the Supreme Court about the appointment.
- (3) **Deputy Presidents** A person is qualified to be appointed as a Deputy President only if the person is—
  - (a) an Australian lawyer of at least 7 years' standing, or
  - (b) a person who holds, or has held, a judicial office of this State or of the Commonwealth, another State or Territory.
- (4) **Principal members** A person is qualified to be appointed as a principal member only if the person—
  - (a) is an Australian lawyer of at least 7 years' standing, or
  - (b) has, in the opinion of the person making the appointment, special knowledge, skill or expertise in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.
- (5) **Senior members** A person is qualified to be appointed as a senior member only if the person—
  - (a) is an Australian lawyer of at least 7 years' standing, or
  - (b) has, in the opinion of the person making the appointment, special knowledge, skill or expertise in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.

- (6) **General members** A person is qualified to be appointed as a general member only if, in the opinion of the person making the appointment, the person—
- (a) has special knowledge, skill or expertise in relation to any class of matters in respect of which the Tribunal has jurisdiction, or
  - (b) is capable of representing the public (or a sector of the public), or a particular organisation, body or group of persons (or class of organisations, bodies or groups of persons), in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.

**Note—**

A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that Division based on particular skills, expertise or qualifications.

#### **14 Division Heads**

- (1) The President or a Deputy President who is a term member may be appointed by the Governor as the Division Head of one or more Divisions of the Tribunal—
- (a) in the instrument of appointment of the President or Deputy President, or
  - (b) by subsequent instrument.

**Note—**

A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the qualifications and procedure for the appointment of the Division Head for that Division.

- (2) A Division Head ceases to hold office as a Division Head if he or she—
- (a) is removed from office as a Division Head by the Governor, or
  - (b) resigns the office by written instrument addressed to the Minister, or
  - (c) ceases to hold office as the President or a Deputy President.
- (3) However, a person does not cease to hold office as the President or a Deputy President simply because the person has been removed, or has resigned, from office as a Division Head under subsection (2).

#### **15 NSW judicial officers acting as members of Tribunal**

- (1) **Classes of NSW judicial officers who may act as members may be prescribed** Any NSW judicial officer who belongs to a class of NSW judicial officer prescribed by the regulations for the purposes of this section is taken to have been duly appointed to act as a member of the Tribunal in relation to such matters within the jurisdiction of the Tribunal as are prescribed by the regulations.
- (2) **President may appoint NSW judicial officer to act as member** Without limiting subsection

(1), the President may appoint any NSW judicial officer to act as a member of the Tribunal in relation to particular proceedings before the Tribunal if—

- (a) the President is satisfied that the appointment of the judicial officer to act as a member is necessary to enable the Tribunal to exercise its functions effectively in the proceedings, and
- (b) the relevant chief judicial officer agrees to the NSW judicial officer's appointment.

(3) **Effect of appointment** Any person who is appointed to act as a member by or under this section—

- (a) holds office as a Deputy President, principal member or senior member as specified in the regulations (in the case of an appointment under subsection (1)) or the instrument of appointment (in the case of an appointment under subsection (2)), and
- (b) has and may exercise all the functions of a member while acting as a member, and
- (c) may continue to exercise his or her functions as a holder of a judicial office.

(4) **Former acting member may complete determination of proceedings** A NSW judicial officer who has acted as a member may attend the sittings of the Tribunal for the purpose of giving reasons for a decision in, or otherwise completing, any proceedings that have been heard by the Tribunal (or were otherwise the subject of deliberations by the Tribunal) while the officer acted as a member, even if the person has ceased to act as a member.

(5) **Definitions** In this section—

**NSW judicial officer** includes a retired NSW judicial officer.

**relevant chief judicial officer** means—

- (a) in relation to the appointment of a Magistrate to act as a member—the Chief Magistrate of the Local Court, or
- (b) in relation to the appointment of a Judge of the District Court to act as a member—the Chief Judge of the Court, or
- (c) in relation to the appointment of a judicial member of the Industrial Relations Commission to act as a member—the President of the Commission, or
- (d) in relation to the appointment of a Judge of the Land and Environment Court to act as a member—the Chief Judge of the Court, or
- (e) in relation to the appointment of a Judge of the Supreme Court to act as a member—the Chief Justice of the Court.

## Division 2 Divisions of Tribunal

### 16 Divisions of Tribunal

- (1) On the establishment of the Tribunal, there are to be the following Divisions of the Tribunal—
  - (a) the Administrative and Equal Opportunity Division,
  - (b) the Consumer and Commercial Division,
  - (c) the Occupational Division,
  - (d) the Guardianship Division.
  - (e) (Repealed)
- (2) The functions of the Tribunal in relation to enabling legislation that are allocated to a Division of the Tribunal are to be exercised in that Division.

**Note—**

Section 4(2) provides that a reference in this Act (however expressed) to the exercise by the Tribunal of its functions in relation to other legislation includes a reference both to its functions under the legislation and its functions under this Act in relation to the legislation.

- (3) The functions of the Tribunal in relation to enabling legislation that are allocated to a Division of the Tribunal are the functions in relation to such legislation that are allocated to the Division by the Division Schedule for the Division.
- (4) However, the functions of the Tribunal when constituted by an Appeal Panel or in exercise of its enforcement jurisdiction are not allocated to any particular Division of the Tribunal.
- (5) A Division of the Tribunal is composed of such members as are assigned to it by or under this Act.
- (6) If the functions allocated to a Division of the Tribunal are reallocated to another Division as a result of amendments made to this Act by amending legislation, any proceedings that were instituted or commenced in the Tribunal before the reallocation may continue to be dealt with and determined as if the reallocation had not occurred unless the amending legislation provides otherwise.

**Note—**

See, for example, section 17, which enables the regulations to make amendments to Division Schedules for Divisions of the Tribunal and, for that purpose, make provision for matters of a savings or transitional nature.

### 17 Division Schedule for a Division of Tribunal

- (1) The **Division Schedule** for a Division of the Tribunal is the Schedule to this Act that

provides for the composition and functions of that Division.

- (2) Without limiting subsection (1), a Division Schedule for a Division of the Tribunal may include provisions about the following matters—
  - (a) the qualifications and procedure for the appointment of a Division Head of the Division,
  - (b) the qualifications and procedure for the assignment of other Division members,
  - (c) the allocation to the Division of functions of the Tribunal in relation to enabling legislation,
  - (c1) the reallocation from the Division to another Division of functions of the Tribunal in relation to enabling legislation,
  - (d) the use of Division Lists in the Division and the qualifications and procedure for the appointment of, and the functions of, List Managers for the Division,
  - (e) special requirements for the constitution of the Tribunal when exercising functions of the Tribunal allocated to the Division,
  - (f) special requirements in relation to the powers of, and the practice and procedure to be followed by, the Tribunal in relation to proceedings in the Division,
  - (g) the functions of registrars in relation to proceedings in the Division,
  - (h) special requirements regarding appeals from decisions made by the Tribunal or a registrar in the Division (including whether appeals lie to an Appeal Panel or court and the constitution and functions of an Appeal Panel or court on any such appeal).
- (3) The provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provisions of this Act (except Part 3A) or the provisions of the procedural rules.
- (4) Subject to subsections (5) and (6), the regulations may—
  - (a) amend section 16(1) to change the name of a Division of the Tribunal and amend other provisions of this Act (including a Division Schedule for a Division of the Tribunal) to update references to a renamed Division, and
  - (b) amend a Division Schedule for a Division of the Tribunal to make additional or different provision for or with respect to the composition and functions of the Division (including, without limitation, the matters referred to in subsection (2)), and
  - (c) make provision for matters of a saving or transitional nature consequent on the

amendment of this Act by the regulations.

- (5) The Minister is not to recommend the making of a regulation for the purposes of subsection (4) unless the Minister certifies that—
  - (a) the President has agreed to the amendments that are proposed to be made by the regulation, and
  - (b) in the case of proposed amendments to Schedule 4 (other than an amendment of a kind referred to in subsection (4)(a))—the Minister for Innovation and Better Regulation has also agreed to the proposed amendments to that Schedule.
- (6) However, a regulation made for the purposes of subsection (4) may not make—
  - (a) any of the following amendments to Schedule 5—
    - (i) an amendment that has the effect of reallocating any of the functions of the Division of the Tribunal to which that Schedule relates in relation to the *Health Practitioner Regulation National Law (NSW)* to another Division,
    - (ii) an amendment to Division 3 (Health practitioners) of Part 4 of that Schedule, including an amendment to another provision of that Schedule that has the effect of indirectly amending clause 14 (Effect of amendments to Schedule by regulations), or
  - (b) any amendment to Schedule 6 (other than an amendment of a kind referred to in subsection (4)(a)).
- (7) Any reference in any other Act or instrument made under any other Act to a Division of the Tribunal that has been renamed under this section is to be read as a reference to the Division as renamed.

## **18 Assignment of members to Divisions of Tribunal**

- (1) The President is assigned to each Division of the Tribunal.
- (2) A Division Head is assigned to the Division of the Tribunal in respect of which he or she is appointed as the Division Head.
- (3) Subject to this Act, the President—
  - (a) is to assign each member (other than the President or a Division Head) to one or more Divisions of the Tribunal, and
  - (b) may assign a member who is a Division Head to one or more Divisions of the Tribunal in respect of which the member is not the Division Head,and may vary any such assignment at any time.

- (4) An assignment of a member to a Division of the Tribunal—
  - (a) is to be made in accordance with any applicable provisions of the Division Schedule for the Division or of this Act or any enabling legislation, and
  - (b) is subject to any limitations specified in the member's instrument of appointment or assignment.
- (5) An assignment of a member to a Division of the Tribunal may be limited to participating in proceedings that are entered in one or more Division Lists of the Division.

### **19 Division Lists and List Managers for Divisions of Tribunal**

- (1) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may establish one or more Division Lists for a Division of the Tribunal in which proceedings allocated to the Division are to be entered for the purpose of managing those proceedings.
- (2) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may, by written instrument, designate a Division member to be a List Manager for a Division List of the Division.

**Note—**

A Division Schedule for a Division of the Tribunal may, in some cases, provide for the use of Division Lists in the Division and for the qualifications and procedure for the designation of, and the functions of, List Managers for the Division.

- (3) A List Manager for a Division of the Tribunal has (subject to any direction from the President or the Division Head of the Division) the function of managing such Division Lists of the Division as may be specified—
  - (a) in the instrument designating the member to be a List Manager, or
  - (b) by the Division Schedule for the Division or by the procedural rules.

**Note—**

Clause 12 of Schedule 2 also enables the Division Head of a Division of the Tribunal to delegate functions of the Division Head to a List Manager of the Division.

- (4) An instrument designating a member to be a List Manager for a Division of the Tribunal may specify a title for the member to use while exercising the functions of a List Manager.
- (5) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may at any time, by written instrument, revoke a member's designation as a List Manager for a Division of the Tribunal.

## **Division 3 Functions of members**

### **20 Functions of President**

- (1) The functions of the President are—
  - (a) to direct the business of the Tribunal (including determining the places and times for sittings of the Tribunal), and
  - (b) to facilitate the adoption of good administrative practices for the conduct of the business of the Tribunal, and
  - (c) to give directions about, and participate in the development of, the practice and procedure to be followed by the Tribunal, and
  - (d) to manage members, including by—
    - (i) developing codes of conduct for members, and
    - (ii) ensuring that members are adequately and appropriately trained to enable them to exercise their functions effectively and efficiently, and
    - (iii) undertaking performance management for members (whether by means of agreements with members, reviews or otherwise), and
    - (iv) developing selection criteria for the appointment of members and, if required by the Minister, overseeing the selection process for members, and
  - (e) to advise the Minister about the appointment, re-appointment and removal of members, and
  - (f) to exercise such other functions as may be conferred or imposed on the President by or under this Act or any other legislation.
- (2) The President may also enter into agreements with Ministers, public officials and other persons or bodies with regulatory functions in relation to any class of matters over which the Tribunal has jurisdiction about the provision, allocation or use of funding in connection with the exercise of the jurisdiction concerned.
- (3) Without limiting subsections (1) and (2), the President has the following functions if appointed before the establishment day—
  - (a) to assist in the development of the Tribunal rules for the Tribunal to use on its establishment,
  - (b) to assign functions to other members appointed before the establishment day with respect to the establishment of the Tribunal,
  - (c) to assign functions to any registrar or other member of staff appointed before the



establishment day,

- (d) to exercise such other functions as are necessary or convenient to facilitate the establishment of the Tribunal.

## **21 Functions of other members and Division Heads**

- (1) A member has such functions as may be conferred or imposed on the member by or under this Act or any other legislation.
- (2) Each member must comply with any procedural directions given by the President and the Division Head of the Division of the Tribunal to which the member is assigned.
- (3) The functions of a Division Head of a Division of the Tribunal are—
  - (a) to direct (subject to this Act, the regulations, the Tribunal rules and any direction of the President) the business of the Tribunal in that Division, and
  - (b) to exercise such other functions as may be conferred or imposed on the Division Head by or under this Act or any other legislation.
- (4) Without limiting subsections (1)–(3), a member (other than the President) or Division Head for a Division of the Tribunal appointed before the establishment day has and may exercise such functions with respect to the establishment of the Tribunal as may be assigned to the member under section 20(3).

## **Division 4 Registrars and other staff**

### **22 Appointment of registrars and other staff**

- (1) Persons (including the principal registrar and any other registrars) may be employed in the Public Service to enable the Tribunal to exercise its functions. Those employees may be referred to as the employees or staff of the Tribunal.
- (2) The President may enter into arrangements with any government agency or other body or person (whether in the public or private sector) for the provision of assistance to the Tribunal in connection with the exercise of its functions.
- (3) A reference in this Act to the appointment of a registrar or other member of staff of the Tribunal is to be read as a reference to the employment of a person as such in the Public Service.

### **23 Functions of registrars**

- (1) A registrar has such functions as may be conferred or imposed on the registrar by or under this Act or any other legislation or law.
- (2) The principal registrar has the following additional functions—

- (a) to assist the President in managing the business and the affairs of the Tribunal,
  - (b) such administrative and other functions as may be conferred or imposed on the principal registrar by or under this Act or any other legislation or law.
- (3) A registrar may exercise such functions of the principal registrar as may be directed by the President or principal registrar.
- (4) Without limiting subsections (1) and (3)—
- (a) the President may, from time to time, designate a registrar to be a registrar for one or more Divisions of the Tribunal, and
  - (b) the designated registrar may (subject to any direction of the President or principal registrar) exercise the functions of the principal registrar in connection with proceedings and legislation allocated to the Division or Divisions concerned.
- (5) Anything done or omitted to be done by a registrar in exercising a function of the principal registrar has effect as if it had been done or omitted to be done by the principal registrar.
- (6) The procedural rules may make provision for or with respect to the functions of the principal registrar and other registrars, including authorising registrars to make ancillary or interlocutory decisions of the Tribunal on behalf of the Tribunal.
- (7) In addition, a registrar (including the principal registrar) appointed before the establishment day has and may exercise such functions with respect to the establishment of the Tribunal as may be assigned to the registrar under section 20(3).

## **Division 5 Tribunal rules and procedural directions**

### **24 Rule Committee of Tribunal**

- (1) There is to be a Rule Committee of the Tribunal.
- (2) The functions of the Rule Committee are—
  - (a) to make the Tribunal rules, and
  - (b) to ensure that the Tribunal rules it makes are as flexible and informal as possible.
- (3) The Rule Committee is to be composed of the following—
  - (a) the President,
  - (b) each Division Head,
  - (c) such other members as may be appointed by the President from time to time.
- (4) The President is to be the Chairperson of the Rule Committee.

- (5) The President is to appoint one of the other members of the Rule Committee who is a Deputy President as Deputy Chairperson of the Rule Committee.
- (6) Unless the regulations provide otherwise, the Rule Committee is to regulate its own procedure.
- (7) The following provisions apply in relation to meetings of the Rule Committee unless the regulations provide, or the Rule Committee decides, otherwise—
  - (a) the Chairperson of the Rule Committee or, in the absence of the Chairperson, the Deputy Chairperson of the Committee is to preside at a meeting of the Committee,
  - (b) in the absence from a meeting of the Rule Committee of both the Chairperson and Deputy Chairperson, another member of the Committee who is a Deputy President is to be chosen by the members present to preside at the meeting,
  - (c) the quorum for a meeting of the Rule Committee is a majority of the number of the members for the time being,
  - (d) any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee,
  - (e) a decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of the Committee,
  - (f) the person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) The President is to call the first meeting of the Rule Committee in such manner as the President thinks fit and (subject to any decision of the Committee) may call such other meetings of the Committee as the President thinks necessary.

## 25 Tribunal rules may provide for practice and procedure

- (1) The Rule Committee may make rules of the Tribunal (referred to in this Act as the **Tribunal rules**), not inconsistent with this Act or enabling legislation, for or with respect to the following—
  - (a) the practice and procedure to be followed in proceedings in the Tribunal,
  - (b) any matter that is, by this Act or any other legislation, required or permitted to be prescribed by the Tribunal rules.

### Note—

A number of provisions of this Act provide for matters to be prescribed by the procedural rules. The term **procedural rules** is defined in section 4(1) to include the Tribunal rules. Procedural rules that make provision as referred to in section 4(4) are not inconsistent with this Act. See section 4(5).

- (2) Without limiting subsection (1)(a), the Tribunal rules may make provision for or with respect to any of the matters specified in Schedule 7.
- (3) Without limiting the generality of section 42 of the *Interpretation Act 1987*, the Tribunal rules may also prescribe different rules for—
  - (a) each of the Divisions of the Tribunal, and
  - (b) different classes of matters.

**Note—**

Section 42 of the *Interpretation Act 1987* provides for the matters for which statutory rules may generally make provision.

- (4) The Tribunal rules may authorise or require the use of an electronic case management system established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000* in relation to any proceedings in the Tribunal in respect of which the use of such a system is authorised by an order in force under clause 3 of Schedule 1 to that Act.
- (5) In the event of an inconsistency between a provision of the regulations and a provision of the Tribunal rules, the provision of the regulations prevails to the extent of the inconsistency.

**Note—**

Section 90(2) also enables the regulations to make provision concerning matters for or with respect to which the Tribunal rules may make provision (including the matters specified in Schedule 7).

- (6) This section does not limit the operation of section 78 (Rules of court) of the *Interpretation Act 1987*.

## **26 Procedural directions**

- (1) The President may give directions (**procedural directions**) relating to the practice and procedures to be followed in, and to the actual conduct of, proceedings in the Tribunal.
- (2) The procedural directions must be—
  - (a) publicly available, and
  - (b) consistent with this Act, enabling legislation and the procedural rules.
- (3) Without limiting subsection (2)(a), it is sufficient compliance with that paragraph if procedural directions are published on the website of the Tribunal.
- (4) Each member, and the parties to proceedings and their representatives, must comply with any applicable procedural directions.

## **Division 6 Constitution of Tribunal**

## **27 Constitution of Tribunal**

- (1) The Tribunal is to be constituted as follows—
- (a) in the case of an internal appeal or designated external appeal—by an Appeal Panel of the Tribunal consisting of—
    - (i) one member who is an Australian lawyer, or
    - (ii) 2 or more members (at least one of whom must be an Australian lawyer),
  - (b) in the case of proceedings for contempt of the Tribunal—by one or more of the following members—
    - (i) the President,
    - (ii) any other member who is a current or former NSW judicial officer,
  - (c) in the case of proceedings for a contravention of a civil penalty provision of this Act—by one or more of the following—
    - (i) the President,
    - (ii) a Deputy President,
    - (iii) a principal member who is an Australian lawyer of at least 7 years' standing,
  - (d) in the case of any other proceedings—by one or more Division members of the Division to which the function of dealing with the proceedings is allocated.

### **Note—**

The functions of the Tribunal are generally exercised in the Divisions of the Tribunal by Division members. However, the functions of the Tribunal when constituted by an Appeal Panel or in exercise of its enforcement jurisdiction are not allocated to any particular Division of the Tribunal. See section 16(4).

A Division Schedule for a Division may, in some cases, make special provision for the constitution of the Tribunal when exercising functions allocated to that Division (including the qualifications of members to sit in specified kinds of proceedings). It may also provide for certain Division functions to be exercised by a registrar and for the constitution of Appeal Panels in internal appeals against decisions made in the Division.

The procedural rules may also authorise a registrar to make ancillary or interlocutory decisions of the Tribunal on behalf of the Tribunal. See section 23(6).

- (2) The President may give or revoke a direction as to the members who are to constitute the Tribunal for the purposes of any particular proceedings.

### **Note—**

The President may delegate the function of constituting the Tribunal for particular proceedings to a Division Head for a Division of the Tribunal or another member. See clause 12 of Schedule 2.

- (3) In giving a direction as to the members who are to constitute the Tribunal for the purposes of any particular proceedings, the President is to have regard to the

following matters—

- (a) the degree of public importance or complexity of the subject-matter of the proceedings,
  - (b) the need for any of the members to have special knowledge or experience in the subject-matter of the proceedings,
  - (c) any applicable requirements in relation to the constitution of the Tribunal that are specified by a Division Schedule for a Division of the Tribunal or enabling legislation,
  - (d) such other matters as the President considers relevant.
- (4) The President may give directions (whether for particular proceedings, classes of proceedings or generally) as to which member is to preside at proceedings in the Tribunal when the Tribunal is constituted by more than one member.
- (5) There may be more than one sitting of the Tribunal (including when constituted as an Appeal Panel) at the same time.
- (6) In this section—

***designated external appeal*** means any of the following—

- (a) an external appeal under section 45 of the *Drug and Alcohol Treatment Act 2007*,
- (b) an external appeal under section 50 of the *NSW Trustee and Guardian Act 2009*,
- (c) any other external appeal that this Act or enabling legislation has declared to be a designated external appeal for the purposes of this section.

## **Part 3 Jurisdiction of Tribunal**

### **28 Jurisdiction of Tribunal generally**

- (1) The Tribunal has such jurisdiction and functions as may be conferred or imposed on it by or under this Act or any other legislation.
- (2) In particular, the jurisdiction of the Tribunal consists of the following kinds of jurisdiction—
  - (a) the general jurisdiction of the Tribunal,
  - (b) the administrative review jurisdiction of the Tribunal,
  - (c) the appeal jurisdiction of the Tribunal (comprising its external and internal appeal jurisdiction),
  - (d) the enforcement jurisdiction of the Tribunal.

- (3) Subject to this Act and enabling legislation, the Tribunal has jurisdiction in respect of matters arising before or after the establishment of the Tribunal.

**Note—**

Section 35D of the *Ombudsman Act 1974* enables the Ombudsman and the President to enter into arrangements with respect to the co-operative exercise of the respective functions of the Ombudsman and the Tribunal (including providing for the referral of matters between them).

## 29 General jurisdiction

- (1) The Tribunal has **general jurisdiction** over a matter if—
- (a) legislation (other than this Act or the procedural rules) enables the Tribunal to make decisions or exercise other functions, whether on application or of its own motion, of a kind specified by the legislation in respect of that matter, and
  - (b) the matter does not otherwise fall within the administrative review jurisdiction, appeal jurisdiction or enforcement jurisdiction of the Tribunal.

**Note—**

The general jurisdiction of the Tribunal includes (but is not limited to) functions conferred on the Tribunal by enabling legislation to review or otherwise re-examine decisions of persons or bodies other than in connection with the exercise of the Tribunal's administrative review jurisdiction.

- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its general jurisdiction—
- (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,
  - (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of such proceedings.
- (3) A **general decision** of the Tribunal is a decision of the Tribunal determining a matter over which it has general jurisdiction.
- (4) A **general application** is an application made to the Tribunal for a general decision.
- (5) Nothing in this section permits general jurisdiction to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by another Act.

## 30 Administrative review jurisdiction

- (1) The *Administrative Decisions Review Act 1997* provides for the circumstances in which the Tribunal has **administrative review jurisdiction** over a decision of an administrator.

**Note—**

See section 9 of the [Administrative Decisions Review Act 1997](#).

- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its administrative review jurisdiction—
  - (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,
  - (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act, the [Administrative Decisions Review Act 1997](#) or enabling legislation in connection with the conduct or resolution of such proceedings.
- (3) An **administratively reviewable decision** is a decision of an administrator over which the Tribunal has administrative review jurisdiction.

**Note—**

See section 7 of the [Administrative Decisions Review Act 1997](#).

- (4) An **administrator**, in relation to an administratively reviewable decision, is the person or body that makes (or is taken to have made) the decision under enabling legislation.

**Note—**

See section 8 of the [Administrative Decisions Review Act 1997](#).

- (5) An **administrative review decision** of the Tribunal is a decision of the Tribunal determining a matter over which it has administrative review jurisdiction.
- (6) An **administrative review application** is an application made to the Tribunal for an administrative review decision.

**Note—**

Chapter 3 (Process for administrative reviews under this Act) of the [Administrative Decisions Review Act 1997](#) also makes provision for the role of administrators when making administratively reviewable decisions and the role of the Tribunal when conducting an administrative review of such decisions.

### **31 External appeal jurisdiction of Tribunal**

- (1) The Tribunal has **external appeal jurisdiction** over a decision (or class of decisions) made by an external decision-maker if legislation provides that an appeal may be made to the Tribunal against any such decision (or class of decisions).
- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its external appeal jurisdiction—
  - (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,



- (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of such proceedings.
- (3) An **appealable external decision** is a decision of an external decision-maker over which the Tribunal has external appeal jurisdiction.
- (4) An **external appeal** is an appeal to the Tribunal against an appealable external decision.
- (5) A provision of enabling legislation that provides for a decision of an external decision-maker to be appealed to the Tribunal extends to the following—
  - (a) a decision made by a person to whom the function of making the decision has been delegated,
  - (b) if the provision specifies the decision-maker by reference to the holding of a particular office or appointment—a decision by any person for the time being acting in, or performing any of the duties of, the office or appointment,
  - (c) a decision made by any other person authorised to exercise the function of making the decision.
- (6) Nothing in this section permits external appeal jurisdiction to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by another Act.

### **32 Internal appeal jurisdiction of Tribunal**

- (1) The Tribunal has **internal appeal jurisdiction** over—
  - (a) any decision made by the Tribunal in proceedings for a general decision or administrative review decision, and
  - (b) any decision made by a registrar of a kind that is declared by this Act or the procedural rules to be internally appealable for the purposes of this section.
- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its internal appeal jurisdiction—
  - (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,
  - (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of such proceedings.
- (3) However, the internal appeal jurisdiction of the Tribunal does not extend to—

- (a) any decision of an Appeal Panel, or
- (b) any decision of the Tribunal in an external appeal, or
- (c) any decision of the Tribunal in proceedings for the exercise of its enforcement jurisdiction, or
- (d) any decision of the Tribunal in proceedings for the imposition of a civil penalty in exercise of its general jurisdiction.

**Note—**

The decisions above may be appealable to the Supreme Court and, in some cases in relation to civil penalty decisions made by the Tribunal (whether under this Act or enabling legislation), the District Court. See section 73 and Part 6.

- (4) An **internally appealable decision** is a decision of the Tribunal or a registrar over which the Tribunal has internal appeal jurisdiction.
- (5) An **internal appeal** is an appeal to the Tribunal against an internally appealable decision.
- (6) Subject to the procedural rules, if a decision of a registrar is an internally appealable decision, the provisions of this Act relating to the making and determination of an internal appeal are taken to apply as if—
  - (a) any reference to the Tribunal at first instance (however expressed) included a reference to a registrar, and
  - (b) any requirement concerning the granting of leave to appeal against particular kinds of decisions of the Tribunal or on particular grounds extended to decisions of the same kind made by a registrar or grounds of the same kind.

### **33 Enforcement jurisdiction of Tribunal**

- (1) The **enforcement jurisdiction** of the Tribunal is comprised of—
  - (a) the functions of the Tribunal when dealing with an alleged or apparent contempt of the Tribunal, and
  - (b) the functions of the Tribunal when dealing with an application under section 77 for a contravention of a civil penalty provision of this Act.

**Note—**

The functions of the Tribunal relating to the imposition of civil penalties under legislation other than this Act fall within the general jurisdiction, and not the enforcement jurisdiction, of the Tribunal. The enforcement jurisdiction of the Tribunal extends only to proceedings for a civil penalty under this Act.

The Tribunal must observe the rules of evidence when exercising its enforcement jurisdiction. See section 38(3).

- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its enforcement jurisdiction—
- (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,
  - (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act in connection with the conduct or resolution of such proceedings.

### **34 Inter-relationship between Tribunal and Supreme Court**

- (1) The Supreme Court may—
- (a) refuse to conduct a judicial review of an administratively reviewable decision if it is satisfied that, in all the circumstances, adequate provision is made for an internal review of the decision or an administrative review of the decision by the Tribunal under the *Administrative Decisions Review Act 1997*, or
  - (b) refuse to conduct a judicial review of a decision of an external decision-maker if it is satisfied that, in all the circumstances, adequate provision is made for the review of the decision by the Tribunal by way of an external appeal, or
  - (c) refuse to conduct a judicial review of a decision of the Tribunal if an internal appeal or an appeal to a court could be, or has been, lodged against the decision.
- (2) This section—
- (a) permits, but does not require, the Supreme Court to refuse to conduct a judicial review of a decision on a ground referred to in subsection (1), and
  - (b) does not limit any power that the Supreme Court has, apart from this section, to refuse to conduct a judicial review of a decision.

- (3) In this section—

**internal review** of an administratively reviewable decision means an internal review of the decision conducted by or on behalf of an administrator under—

- (a) the *Administrative Decisions Review Act 1997*, or
- (b) any other Act instead of the *Administrative Decisions Review Act 1997*.

**judicial review** does not include an appeal to the Supreme Court under this or any other Act.

## **Part 3A Federal proceedings**

### 34A Definitions

In this Part—

**authorised court** means any of the following—

- (a) the District Court,
- (b) the Local Court.

**federal jurisdiction** means jurisdiction of a kind referred to in section 75 or 76 of the Commonwealth Constitution.

**jurisdictional limit**, in relation to an authorised court, means the jurisdictional limit of the court within the meaning of the *Civil Procedure Act 2005*.

**substituted proceedings**—see section 34C.

### 34B Applications or appeals involving federal jurisdiction may be made to authorised court

- (1) A person with standing to make an original application or external appeal may, with the leave of an authorised court, make the application or appeal to the court instead of the Tribunal.
- (2) The authorised court may grant leave for the application or appeal to be made to the court only if it is satisfied that—
  - (a) the application or appeal was first made with the Tribunal, and
  - (b) the determination of the application or appeal by the Tribunal would involve an exercise of federal jurisdiction, and
  - (c) the Tribunal would otherwise have had original jurisdiction or external appellate jurisdiction enabling it to determine the application or appeal, and
  - (d) substituted proceedings on the application or appeal would be within the jurisdictional limit of the court.
- (3) An application for leave must be—
  - (a) filed with the authorised court along with—
    - (i) an application or appeal that has been completed in the form and manner required under this Act for the kind of application or appeal concerned, and
    - (ii) if the parties to the application or appeal have reached a settlement before leave is sought using a resolution process referred to in section 37—a copy of the terms of settlement, and

- (b) accompanied by the applicable fee (if any) payable in the Tribunal for the application or appeal unless it has already been paid to the Tribunal.
- (4) If an appeal is made under this Act in relation to any matter in issue in the application or appeal—
  - (a) for an appeal lodged before the application for leave is made to an authorised court—the court cannot grant leave unless and until the appeal is determined, or
  - (b) for an appeal lodged on or after leave is granted by an authorised court—proceedings in the court concerning the application or appeal are stayed until the appeal made under this Act is determined.
- (5) An authorised court may remit an application or appeal to the Tribunal to determine the application or appeal if the court is satisfied that the Tribunal has jurisdiction to determine it. The court may do so instead of granting leave or after granting leave.
- (6) An authorised court that remits an application or appeal to the Tribunal may make such orders that it considers appropriate to facilitate the determination of the application or appeal by the Tribunal.
- (7) The Tribunal is to determine any application or appeal that is remitted to it in accordance with any orders made by the authorised court.
- (8) The following provisions apply if the authorised court is the District Court—
  - (a) the District Court may grant leave and then transfer the proceedings on the application or appeal to the Local Court in accordance with the provisions of Division 2 (Transfer of proceedings from higher to lower court) of Part 9 of the *Civil Procedure Act 2005*,
  - (b) if a transfer order is made under that Division, this Part applies to the proceedings as if the Local Court had granted leave for the application or appeal to be made to it instead of the Tribunal.

### **34C Proceedings after leave granted**

- (1) **Proceedings taken to be commenced if leave granted** If an authorised court grants leave for an original application or external appeal to be made to it instead of the Tribunal—
  - (a) proceedings for the determination of the application or appeal (***substituted proceedings***) are taken to have been commenced in the authorised court on the day on which the application or appeal was first made to the Tribunal, and
  - (b) the court may make such orders (including in relation to the Tribunal) as it considers appropriate to facilitate its determination of the application or appeal.
- (2) Subsection (1) applies despite any limitation period under the *Limitation Act 1969* or

any enabling legislation that applies to the application or appeal concerned provided it was first lodged with the Tribunal before the expiry of the period.

- (3) **Jurisdiction and functions of authorised court** The authorised court has, and may exercise, all of the jurisdiction and functions in relation to the substituted proceedings that the Tribunal would have had if it could exercise federal jurisdiction, including jurisdiction and functions conferred or imposed on the Tribunal by or under this Act or enabling legislation.
- (4) **Modifications to certain functions** Despite subsections (1)–(3), the following provisions apply in relation to substituted proceedings—
- (a) the authorised court is to be constituted as provided by its relevant courts legislation instead of as provided by this Act or enabling legislation,
  - (b) a party to the substituted proceedings is not required to pay any fees in relation to the commencement of the proceedings in the authorised court other than the fees referred to in section 34B(3)(b) unless the authorised court determines that additional fees are payable under its relevant courts legislation because of a substantial alteration in the nature of the claims in the proceedings,
  - (c) the legislation applicable to appeals against decisions of the authorised court apply to decisions of the court in the substituted proceedings instead of Divisions 2 and 3 of Part 6,
  - (d) if the authorised court is the District Court—the practice and procedure applicable in the District Court under its relevant courts legislation (and any laws applicable in relation to contempt of court) apply to the substituted proceedings instead of Parts 4 and 5, any enabling legislation, the procedural rules and practice directions,
  - (e) if the authorised court is the Local Court—the practice and procedure applicable in the Local Court under its relevant courts legislation applies to the substituted proceedings instead of Part 4, any enabling legislation, the procedural rules and practice directions, except that—
    - (i) the rules of evidence are to be applied to the proceedings if they would have been required to be applied if the proceedings were before the Tribunal, but the Local Court may, if it decides that it is appropriate to do so in the circumstances, not apply the rules of evidence if they were not required to be applied by the Tribunal, and
    - (ii) a person who is not an Australian legal practitioner can, with the leave of the Local Court, represent a party to the proceedings, but only in the circumstances that the Tribunal would have been permitted to allow it if the proceedings were before the Tribunal, and

- (iii) a person who could have been made a party to, or intervened in, the proceedings if the proceedings were before the Tribunal can, with the leave of the Local Court, also be made a party or intervene, and
  - (iv) the Local Court may award costs in the proceedings only in the circumstances that the Tribunal would have been permitted to award them (and the costs are to be assessed in the same way as they would have been) if the proceedings were before the Tribunal,
  - (f) the authorised court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the substituted proceedings commenced,
  - (g) the power of the authorised court to make orders as to costs in relation to the substituted proceedings includes a power to make orders with respect to—
    - (i) the application for, and the granting of, leave for the application or appeal to which the substituted proceedings relate to be made to the court, and
    - (ii) any step taken in the Tribunal before leave was granted,
  - (h) any other modifications (including to the provisions of this Act or other legislation) as may be prescribed by the regulations for substituted proceedings of the kind concerned.
- (5) The Minister is not to recommend the making of a regulation for the purposes of subsection (4)(h) unless the Minister certifies that—
- (a) if the proposed amendments affect the exercise of jurisdiction or functions by the Tribunal—the President has agreed to the amendments, and
  - (b) if the proposed amendments affect the exercise of jurisdiction or functions by the District Court—the Chief Judge of the District Court has agreed to the amendments, and
  - (c) if the proposed amendments affect the exercise of jurisdiction or functions by the Local Court—the Chief Magistrate of the Local Court has agreed to the amendments.
- (6) **References to Tribunal in legislation** To avoid doubt (but subject to the regulations)—
- (a) any reference to the Tribunal in a provision of legislation that confers or imposes a function on the Tribunal is to be read as including a reference to an authorised court if the function is conferred or imposed on the court because of the operation of this section, and
  - (b) any reference to proceedings in the Tribunal in a provision of the kind referred to in paragraph (a) is to be read as including a reference to proceedings in the

authorised court.

(7) **Definitions** In this section—

**modification** includes addition, exception, omission or substitution.

**relevant courts legislation** means—

(a) for the District Court—the *District Court Act 1973* and the rules of court under that Act, and

(b) for the Local Court—the *Local Court Act 2007* and the rules of court under that Act,

and includes the *Civil Procedure Act 2005* and the regulations and uniform rules under that Act in their application to the Court concerned.

### **34D Relationship of Part to this Act and other laws**

- (1) The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or other legislation.
- (2) To avoid doubt, subsection (1) applies despite anything in a Division Schedule for a Division of the Tribunal.

## **Part 4 Practice and procedure**

### **Division 1 Introduction**

#### **35 Application of Part**

Each of the provisions of this Part is subject to enabling legislation and the procedural rules.

**Note—**

The Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the practice and procedure to be followed in connection with certain proceedings allocated to the Division for determination. The provisions of the Division Schedule prevail to the extent of any inconsistency with the provisions of this Part. See section 17(3).

Section 4(4) also provides that any provisions of this Act that are expressed to be subject to the procedural rules have effect subject to any exceptions, limitations or other restrictions specified by the procedural rules.

Enabling legislation may also make provision for matters relating to practice and procedure in relation to functions conferred on the Tribunal, including (for example) specifying periods within which applications or appeals under that legislation are to be made.

#### **36 Guiding principle to be applied to practice and procedure**

- (1) The **guiding principle** for this Act and the procedural rules, in their application to proceedings in the Tribunal, is to facilitate the just, quick and cheap resolution of the



real issues in the proceedings.

- (2) The Tribunal must seek to give effect to the guiding principle when it—
  - (a) exercises any power given to it by this Act or the procedural rules, or
  - (b) interprets any provision of this Act or the procedural rules.
- (3) Each of the following persons is under a duty to co-operate with the Tribunal to give effect to the guiding principle and, for that purpose, to participate in the processes of the Tribunal and to comply with directions and orders of the Tribunal—
  - (a) a party to proceedings in the Tribunal,
  - (b) an Australian legal practitioner or other person who is representing a party in proceedings in the Tribunal.
- (4) In addition, the practice and procedure of the Tribunal should be implemented so as to facilitate the resolution of the issues between the parties in such a way that the cost to the parties and the Tribunal is proportionate to the importance and complexity of the subject-matter of the proceedings.
- (5) However, nothing in this section requires or permits the Tribunal to exercise any functions that are conferred or imposed on it under enabling legislation in a manner that is inconsistent with the objects or principles for which that legislation provides in relation to the exercise of those functions.

### **37 Tribunal to promote use of resolution processes**

- (1) The Tribunal may, where it considers it appropriate, use (or require parties to proceedings to use) any one or more resolution processes.

**Note—**

See section 59 for the power of the Tribunal to give effect to a settlement reached by the parties following the use of a resolution process.

- (2) A **resolution process** is any process (including, for example, alternative dispute resolution) in which parties to proceedings are assisted to resolve or narrow the issues between them in the proceedings.

### **38 Procedure of Tribunal generally**

- (1) The Tribunal may determine its own procedure in relation to any matter for which this Act or the procedural rules do not otherwise make provision.
- (2) The Tribunal is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice.
- (3) Despite subsection (2)—

- (a) the Tribunal must observe the rules of evidence in—
  - (i) proceedings in exercise of its enforcement jurisdiction, and
  - (ii) proceedings for the imposition by the Tribunal of a civil penalty in exercise of its general jurisdiction, and
- (b) section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* is taken to apply to evidence given in proceedings in the Tribunal even when the Tribunal is not required to apply the rules of evidence in those proceedings.

**Note—**

Section 67 also prevents the compulsory disclosure of certain documents in proceedings in the Tribunal that would, in proceedings before a court, be protected from disclosure by reason of a claim of privilege.

- (4) The Tribunal is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (5) The Tribunal is to take such measures as are reasonably practicable—
  - (a) to ensure that the parties to the proceedings before it understand the nature of the proceedings, and
  - (b) if requested to do so—to explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceedings, and
  - (c) to ensure that the parties have a reasonable opportunity to be heard or otherwise have their submissions considered in the proceedings.
- (6) The Tribunal—
  - (a) is to ensure, as far as practicable, that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and
  - (b) may require evidence or argument to be presented orally or in writing, and
  - (c) in the case of a hearing—may require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases.

## **Division 2 Commencement of proceedings**

### **39 What constitutes an application**

For the purposes of this Act, an **application** to the Tribunal includes a complaint, referral

or other mechanism (however expressed) by means of which enabling legislation provides for a matter to be brought to the attention of the Tribunal for a decision.

#### **40 Making of applications and appeals**

An application or appeal to the Tribunal is to be made in the time and manner prescribed by enabling legislation or the procedural rules.

#### **41 Extensions of time**

- (1) The Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under any legislation in respect of which the Tribunal has jurisdiction despite anything to the contrary under that legislation.
- (2) Such an application may be made even though the relevant period of time has expired.

#### **42 Service of documents outside the State**

The Tribunal may require a document to be served outside the State.

#### **43 Effect of pending general applications and appeals**

- (1) This section applies to the making or lodgment of any of the following (a ***pending general application or appeal***)—
  - (a) a general application for the review or other re-examination of a decision made by an external decision-maker,
  - (b) an external appeal,
  - (c) an internal appeal.

##### **Note—**

See Division 2 of Part 3 of Chapter 3 of the [Administrative Decisions Review Act 1997](#) for the effect of pending administrative review applications on administratively reviewable decisions and the making of orders staying or otherwise affecting such decisions.

- (2) A pending general application or appeal does not affect the operation of the decision to which the application or appeal relates, or prevent the taking of action to implement the decision, unless the Tribunal makes an order staying or otherwise affecting the operation of the decision.
- (3) The Tribunal may make such orders (whether with or without conditions) staying or otherwise affecting the operation of a decision to which a pending general application or appeal relates as it considers appropriate to secure the effectiveness of the determination of the application or appeal.

### **Division 3 Participation in proceedings**

#### **44 Parties and intervention**

- (1) The Tribunal may order that a person be joined as a party to proceedings if the Tribunal considers that the person should be joined as a party.
- (2) The Tribunal may order that a person be removed as a party to proceedings if the Tribunal considers that the person has—
  - (a) been improperly or unnecessarily joined, or
  - (b) ceased to be a proper or necessary party.
- (3) For the avoidance of doubt, the member or members who constituted the Tribunal when it made an internally appealable decision cannot be made parties to an internal appeal against the decision.
- (4) The following persons may intervene and be heard in proceedings to which they are not already parties—
  - (a) the Attorney General,
  - (b) a Minister who administers the legislation that confers or imposes functions the exercise (or purported exercise) of which are in issue in the proceedings,
  - (c) any other person who is authorised by this Act, enabling legislation or the procedural rules to intervene in the proceedings.
- (5) A Minister may (from money otherwise lawfully available for the purpose) authorise the payment to a party to the proceedings in which the Minister or the Minister's delegate intervenes such costs (if any) as the Minister considers were reasonably incurred by that party in relation to the proceedings as a result of that intervention.

#### **45 Representation of parties**

- (1) A party to proceedings in the Tribunal—
  - (a) has the carriage of the party's own case and is not entitled to be represented by any person, and
  - (b) may be represented by another person only if the Tribunal grants leave—
    - (i) for that person to represent the party, or
    - (ii) in the case of representation by an Australian legal practitioner—for a particular or any Australian legal practitioner to represent the party.
- (2) However, a party to an internal appeal (or in an application for leave to make an internal appeal) may be represented by a person without requiring the leave of an Appeal Panel if the party was entitled to be represented by such a person without the leave of Tribunal in the proceedings in which the decision under appeal was made.

**Note—**

A Division Schedule for a Division of the Tribunal may, in some cases, allow certain kinds of persons to represent parties in proceedings allocated to that Division without requiring the leave of the Tribunal.

(3) The Tribunal may at its discretion—

- (a) grant or refuse leave under subsection (1)(b), and
- (b) revoke any leave that it has granted.

(4) The Tribunal may—

- (a) appoint a person to act as guardian ad litem for a party, or
- (b) appoint a person to represent a party, or
- (c) order that a party be separately represented.

(4A) In proceedings that directly or significantly affect a child (that is, a person under the age of 18 years) who is not a party to the proceedings, the Tribunal may—

- (a) appoint a person to act as guardian ad litem for the child, or
- (b) order that the child be separately represented.

(4B) The Tribunal may, at its discretion, revoke any appointment or order made under subsection (4) or (4A).

(4C) Without limiting subsection (4)(a) or (4A)(a), the Tribunal may order that a person be represented by a guardian ad litem without naming a particular person to be appointed as guardian ad litem.

(4D) If the Tribunal makes an order under subsection (4C) the guardian ad litem is taken to have been appointed as guardian ad litem when the Tribunal receives a written notice from the administrator of the Guardian Ad Litem Panel naming the person selected to be the guardian ad litem.

(5) A person is not entitled to legal aid under the [Legal Aid Commission Act 1979](#) merely because the Tribunal has made an order under subsection (4)(c) or (4A)(b).

(6) Anything done or omitted to be done by a person of a class prescribed by the regulations who is appointed by the Tribunal to represent a party or other person does not subject the person personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of representing the party or other person. However, any such liability attaches instead to the Crown.

#### **46 Powers in relation to witnesses**

(1) The Tribunal may—

- (a) call any witness of its own motion, and
  - (b) examine any witness on oath or affirmation or require evidence to be verified by a statutory declaration, and
  - (c) examine or cross-examine any witness to such extent as the Tribunal thinks proper in order to elicit information relevant to the exercise of the functions of the Tribunal in any proceedings, and
  - (d) compel any witness to answer questions which the Tribunal considers to be relevant in any proceedings.
- (2) If the Tribunal decides to call a person as a witness under subsection (1)(a), the Tribunal may—
- (a) seek to procure the voluntary attendance of the witness before it by notifying the person in such manner as it thinks appropriate in the circumstances, or
  - (b) issue a summons (or direct a registrar to issue a summons) to compel the attendance of the person before it.
- (3) Nothing in subsection (1) enables the Tribunal to compel a witness to answer a question if the witness has a reasonable excuse for refusing to answer the question.

#### **47 Allowances and expenses of witnesses**

- (1) If the regulations so provide, a person (other than a public servant in his or her capacity as such) who is required to appear or give evidence before the Tribunal is entitled to be paid such allowances and expenses as are prescribed, or ascertained in accordance with, the regulations.
- (2) Subject to subsection (3), the allowances and expenses are to be paid by the party at whose request a witness is summoned.
- (3) The Tribunal may order that the allowances and expenses of a witness referred to in subsection (2) be paid wholly or partly by the State out of money otherwise lawfully available.

#### **48 Issue of summons**

- (1) A summons for the purposes of this Act may be issued by a registrar—
  - (a) on the application of a party to the proceedings, or
  - (b) at the direction of the Tribunal.

#### **Note—**

See also section 46(2)(b).

- (2) The fee (if any) prescribed by the regulations is payable for the issue of a summons on the application of a party to the proceedings.
- (3) Such a summons must be signed by a registrar or as otherwise prescribed by the procedural rules and may require the person to whom it is addressed—
  - (a) to attend and give evidence, or
  - (b) to attend and produce documents or other things,or both.
- (4) The regulations may make provision for or with respect to excusing, in specified circumstances, a person who produces documents or other things in answer to a summons from attendance at the Tribunal.
- (5) A summons may be served within or outside the State.

## **Division 4 Conduct of proceedings**

### **49 Hearings to be open to public**

- (1) A hearing by the Tribunal is to be open to the public unless the Tribunal orders otherwise.
- (2) The Tribunal may (of its own motion or on the application of a party) order that a hearing be conducted wholly or partly in private if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason.

### **50 When hearings are required**

- (1) A hearing is required for proceedings in the Tribunal except—
  - (a) in proceedings for the granting of leave for an external or internal appeal, or
  - (b) in connection with the use of any resolution processes in proceedings, or
  - (c) if the Tribunal makes an order under this section dispensing with a hearing, or
  - (d) in such other circumstances as may be prescribed by the procedural rules.
- (2) The Tribunal may make an order dispensing with a hearing if it is satisfied that the issues for determination can be adequately determined in the absence of the parties by considering any written submissions or any other documents or material lodged with or provided to the Tribunal.
- (3) The Tribunal may not make an order dispensing with a hearing unless the Tribunal has first—

- (a) afforded the parties an opportunity to make submissions about the proposed order, and
  - (b) taken any such submissions into account.
- (4) The Tribunal may determine proceedings in which a hearing is not required based on the written submissions or any other documents or material that have been lodged with or provided to the Tribunal in accordance with the requirements of this Act, enabling legislation and the procedural rules.
- (5) This section does not prevent the Tribunal from holding a hearing even if it is not required.

### **51 Adjournment of proceedings**

The Tribunal may adjourn proceedings to any time and place (including for the purpose of enabling the parties to negotiate a settlement).

### **52 Reconstitution of Tribunal during proceedings**

- (1) The President may replace the member, or one of the members, constituting the Tribunal after the consideration of a matter by the Tribunal has commenced if, before the matter is determined, the member—
- (a) becomes unavailable for any reason, or
  - (b) ceases to be a member, or
  - (c) ceases to have a qualification required for participation in the proceedings, or
  - (d) is directed by the President not to take part in the proceedings.
- (2) The President may not replace a member unless the President has first—
- (a) afforded the parties an opportunity to make submissions about the proposed replacement, and
  - (b) taken any such submissions into account.
- (2A) The President must not make a direction under subsection (1)(d) in relation to a member unless the President—
- (a) has consulted the member, if it is reasonably practicable to do so, and
  - (b) is satisfied that making the direction is—
    - (i) in the interests of justice, and
    - (ii) in the interests of achieving the expeditious and efficient conduct of the proceedings, and



(iii) otherwise appropriate having regard to the objects of this Act.

- (2B) The President may give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced.
- (3) The Tribunal as reconstituted under this section is to have regard to the evidence, submissions and decisions in relation to the matter that were given or made before the Tribunal was reconstituted.

### **53 Amendments and irregularities**

- (1) The Tribunal may, in any proceedings, make any amendments to any document (for example, an application or appeal) filed in connection with the proceedings that the Tribunal considers to be necessary in the interests of justice.
- (2) Any such amendment may be made—
- (a) at any stage of the proceedings, and
  - (b) on such terms as the Tribunal thinks fit,
- but may only be made after giving notice to the party to whom the amendment relates.
- (3) If a provision of this Act or the procedural rules is not complied with in relation to the commencement or conduct of proceedings, the failure to comply is to be treated as an irregularity and does not nullify the proceedings or any decision in the proceedings unless the Tribunal determines otherwise.
- (4) The Tribunal may, however, in dealing with any such irregularity, wholly or partly set aside the proceedings or a decision in the proceedings.

### **54 References of questions of law to Supreme Court**

- (1) The Tribunal (including when constituted as an Appeal Panel) may, of its own motion or at the request of a party, refer a question of law arising in the proceedings to the Supreme Court for the opinion of the Court.
- (2) The Tribunal may refer a question of law under this section only if the President has consented in writing to the question being referred.
- (3) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section, but may decline to exercise that jurisdiction if it considers it appropriate to do so.
- (4) If a question of law arising in proceedings has been referred to the Supreme Court under this section, the Tribunal is not—

- (a) to give a decision in the proceedings to which the question is relevant while the reference is pending, or
  - (b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.
- (5) Subsection (4) extends to the Tribunal when constituted as an Appeal Panel that is determining an internal appeal from a decision of the Tribunal in proceedings before which a question of law has been referred by the Tribunal at first instance to the Supreme Court under this section.

### **55 Dismissal of proceedings**

- (1) The Tribunal may dismiss at any stage any proceedings before it in any of the following circumstances—
- (a) if the applicant or appellant (or, if there is more than one applicant or appellant, each applicant or appellant) withdraws the application or appeal to which the proceedings relate,
  - (b) if the Tribunal considers that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance,
  - (c) if the applicant or appellant (or, if there is more than one applicant or appellant, each applicant or appellant) has failed to appear in the proceedings,
  - (d) if the Tribunal considers that there has been a want of prosecution of the proceedings.
- (2) The Tribunal may reinstate proceedings that have been dismissed under subsection (1)(c) if the Tribunal considers that there is a reasonable explanation for that failure.

## **Division 5 Determination of issues and proceedings**

### **56 Tribunal may reserve decision**

The Tribunal may reserve its decision in relation to any proceedings.

### **57 Tribunal divided in opinion**

- (1) If the Tribunal is constituted by more than one member for the purposes of the determination of any proceedings and the members are divided in opinion, the opinion of the majority is taken to be the decision of the Tribunal.
- (2) However, a question of law arising in proceedings in which the Tribunal is constituted by one or more members who are Australian lawyers is to be decided in accordance with the opinion of the member or the majority of the members who are Australian lawyers.

- (3) If the members are equally divided in their opinion, the opinion that prevails is—
- (a) in proceedings in which the presiding member is an Australian lawyer or none of the members sitting are Australian lawyers—the opinion of the presiding member, or
  - (b) in proceedings in which the presiding member is not an Australian lawyer but one or more of the other members sitting are Australian lawyers—
    - (i) on a question of law—the opinion of the member who is an Australian lawyer (or the member with the greatest seniority who is an Australian lawyer), or
    - (ii) on any other question—the opinion of the presiding member.
- (4) In this section, **question of law** includes the question whether a particular question is a question of law.

### **58 Power to impose conditions**

A power of the Tribunal to make an order or other decision includes a power to make the order or other decision subject to such conditions (including exemptions) as the Tribunal specifies when making the order or other decision.

### **59 Powers when proceedings settled**

- (1) The Tribunal may, in any proceedings, make such orders (including an order dismissing the application or appeal that is the subject of the proceedings) as it thinks fit to give effect to any agreed settlement reached by the parties in the proceedings if—
- (a) the terms of the agreed settlement are in writing, signed by or on behalf of the parties and lodged with the Tribunal, and
  - (b) the Tribunal is satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement.
- (2) The Tribunal may dismiss the application or appeal that is the subject of the proceedings if it is not satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms consistent with the terms of the agreed settlement.

### **60 Costs**

- (1) Each party to proceedings in the Tribunal is to pay the party's own costs.
- (2) The Tribunal may award costs in relation to proceedings before it only if it is satisfied that there are special circumstances warranting an award of costs.

- (3) In determining whether there are special circumstances warranting an award of costs, the Tribunal may have regard to the following—
- (a) whether a party has conducted the proceedings in a way that unnecessarily disadvantaged another party to the proceedings,
  - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceedings,
  - (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law,
  - (d) the nature and complexity of the proceedings,
  - (e) whether the proceedings were frivolous or vexatious or otherwise misconceived or lacking in substance,
  - (f) whether a party has refused or failed to comply with the duty imposed by section 36(3),
  - (g) any other matter that the Tribunal considers relevant.
- (4) If costs are to be awarded by the Tribunal, the Tribunal may—
- (a) determine by whom and to what extent costs are to be paid, and
  - (b) order costs to be assessed on the basis set out in the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)) or on any other basis.
- (5) In this section—
- costs** includes—
- (a) the costs of, or incidental to, proceedings in the Tribunal, and
  - (b) the costs of, or incidental to, the proceedings giving rise to the application or appeal, as well as the costs of or incidental to the application or appeal.

## **61 When decision determining proceedings takes effect**

A general decision or a decision determining an external or internal appeal takes effect on the date on which it is given or such later date as may be specified in the decision.

### **Note—**

See section 66 of the [Administrative Decisions Review Act 1997](#) for when an administrative review decision takes effect.

## **62 Tribunal to give notice of decision and provide written reasons on request**

- (1) The Tribunal (including when constituted as an Appeal Panel) is to ensure that each

party to proceedings is given notice of any decision that it makes in the proceedings.

- (2) Any party may, within 28 days of being given notice of a decision of the Tribunal, request the Tribunal to provide a written statement of reasons for its decision if a written statement of reasons has not already been provided to the party. The statement must be provided within 28 days after the request is made.
- (2A) Subsection (2) does not apply to the following decisions of the Tribunal—
- (a) a decision to make an order dispensing with a hearing of the Tribunal under section 50(2),
  - (b) a decision to grant an adjournment,
  - (c) a decision under section 60 not to award costs, except where a party has argued there are special circumstances warranting an award of costs,
  - (d) a decision to award costs in proceedings of either of the following kinds—
    - (i) proceedings for the exercise of a function of the Consumer and Commercial Division of the Tribunal,
    - (ii) an internal appeal against a decision of the Consumer and Commercial Division of the Tribunal,
  - (e) if the parties have consented to the making of an order—a decision to make the order,
  - (f) other minor procedural decisions that do not have a final or determinative impact on the rights of a party.
- (3) A written statement of reasons for the purposes of this section must set out the following—
- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the Tribunal's understanding of the applicable law,
  - (c) the reasoning processes that lead the Tribunal to the conclusions it made.
- (4) Nothing in this section prevents the Tribunal from giving oral reasons or a written statement of reasons for a decision it makes even if it has not been requested to do so by a party.

### **63 Power to correct errors in decisions of Tribunal**

- (1) If, after the making of a decision by the Tribunal, the President or the member who presided at the proceedings is satisfied that there is an obvious error in the text of a

notice of the decision or a written statement of reasons for the decision, he or she may direct a registrar to alter the text of the notice or statement in accordance with the directions of the President or the member.

- (2) If the text of a notice or statement is so altered, the altered text is taken to be the notice of the Tribunal's decision or the statement of its reasons, as the case may be, and notice of the alteration is to be given to the parties in the proceedings in such manner as the President or member may direct.
- (3) Examples of obvious errors in the text of a notice of a decision or a statement of reasons for a decision are where—
  - (a) there is an obvious clerical or typographical error in the text of the notice or statement, or
  - (b) there is an error arising from an accidental slip or omission, or
  - (c) there is a defect of form, or
  - (d) there is an inconsistency between the stated decision and the stated reasons, or
  - (e) there is an inconsistency between the name of a person stated in the text of the notice or statement and the name stated on the person's birth certificate or other form of identification.

## **Division 6 Information disclosure**

### **64 Tribunal may restrict disclosures concerning proceedings**

- (1) If the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, it may (of its own motion or on the application of a party) make any one or more of the following orders—
  - (a) an order prohibiting or restricting the disclosure of the name of any person (whether or not a party to proceedings in the Tribunal or a witness summoned by, or appearing before, the Tribunal),
  - (b) an order prohibiting or restricting the publication or broadcast of any report, including a sound recording or transcript, of proceedings in the Tribunal,
  - (c) an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal,
  - (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

- (2) The Tribunal cannot make an order under this section that is inconsistent with section 65.
- (3) The Tribunal may from time to time vary or revoke an order made under subsection (1).
- (4) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## **65 Publication of names or identification of persons involved in certain proceedings**

- (1) This section applies only to the following proceedings—
  - (a) proceedings in the Guardianship Division (or internal appeals against decisions made in such proceedings),
  - (b) proceedings for a decision for the purposes of the community welfare legislation within the meaning of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (including an internal appeal against such a decision),
  - (c) such other proceedings (or classes of proceedings) as may be prescribed by the regulations for the purposes of this section.
- (2) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person—
  - (a) who appears as a witness before the Tribunal in any proceedings, or
  - (b) to whom any proceedings in the Tribunal relate, or
  - (c) who is mentioned or otherwise involved in any proceedings in the Tribunal, whether before or after the proceedings are disposed of.Maximum penalty—
  - (a) in the case of a corporation—100 penalty units, or
  - (b) in any other case—50 penalty units or imprisonment for 12 months, or both.
- (3) This section does not prohibit the publication or broadcasting of an official report, including a sound recording or transcript, of the proceedings that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.
- (3A) A report, including a sound recording or transcript, of proceedings authorised by the Tribunal to be provided to a party to the proceedings for the party's use only is not an official report of the proceedings for subsection (3).

- (4) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## **66 Effect of *Government Information (Public Access) Act 2009***

- (1) **General rule** Except as provided by this section, nothing in this Act requires or authorises any person or body to disclose information to another person or body if there is an overriding public interest against the disclosure of the information under the *Government Information (Public Access) Act 2009*.
- (2) **Disclosure to person or body other than Tribunal** The provisions of the *Government Information (Public Access) Act 2009* continue to apply to the disclosure of information to any person or body other than to the Tribunal as if this Act had not been enacted.
- (3) **Disclosure to Tribunal** If a provision of this Act requires or authorises any person or body to disclose information to the Tribunal in relation to any proceedings before it and there is an overriding public interest against the disclosure of the information under the *Government Information (Public Access) Act 2009*—
- (a) the *Government Information (Public Access) Act 2009* does not prevent the disclosure of the information to the Tribunal, and
  - (b) the Tribunal is to do all things necessary to ensure that the information is not disclosed to any person other than a member of the Tribunal as constituted for the purpose of the proceedings unless the person or body disclosing the information to the Tribunal consents to the further disclosure.
- (4) **Certificates by Secretary or General Counsel of the Cabinet Office concerning Cabinet information** The Secretary or General Counsel of the Cabinet Office may certify that information is Cabinet information. Any such certificate—
- (a) is conclusive of that fact, and
  - (b) authorises any person who would otherwise be required under this Act to lodge a document containing that information with (or disclose the information to) the Tribunal to refuse to lodge the document with (or disclose the information to) the Tribunal.
- (5) **Definitions** In this section—

**Cabinet information** means information that is Cabinet information under the *Government Information (Public Access) Act 2009*.

**disclose** has the same meaning as in the *Government Information (Public Access) Act 2009*.



## 67 Privileged documents

- (1) Nothing in this Act requires the disclosure of a document if the Tribunal or President is satisfied that evidence of the document could not be adduced in proceedings before a NSW court by reason of the operation of any of the following provisions of the [Evidence Act 1995](#)—
- (a) section 9 (Application of common law and equity), but only to the extent that it preserves any privilege against the adducing of evidence,
  - (b) section 10 (Parliamentary privilege preserved),
  - (c) Part 3.10 (Privileges) of Chapter 3.

- (2) In this section—

**disclosure** of a document includes the following—

- (a) the provision of copies of the document,
- (b) the granting of access to the document,
- (c) the disclosure of the contents of the document.

**document** includes a part of a document.

**NSW court** has the same meaning as in the [Evidence Act 1995](#).

## 68 Court cannot compel disclosure by members and officers of certain confidential information

- (1) A person who is, or has been, a member, registrar or other officer of the Tribunal is not competent, and cannot be required, to give evidence to a court relating to a matter, or produce in a court a document furnished to the Tribunal in connection with any proceedings, if—
- (a) the giving of the evidence or production of the document would be contrary to an order of the Tribunal in force under section 64(1) or under a similar provision of another Act, or
  - (b) an application has been made to the Tribunal for an order under section 64(1), or under such a similar provision, concerning the matter to which the evidence would relate, or in relation to the document, and the Tribunal has not determined that application, or
  - (c) the evidence concerns, or the document is, a document that the Tribunal is prevented from disclosing by operation of section 66.
- (2) A person who is, or has been, a member, registrar or other officer of the Tribunal cannot be required to give evidence to a court in relation to any proceedings in the

Tribunal.

(3) In this section—

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**produce** includes permit access to.

## **69 Application of confidentiality provisions in other Acts**

If—

- (a) a provision of another Act prohibits the disclosure (whether absolutely, conditionally or in certain circumstances) of information by persons who—
  - (i) are included in a particular class of persons, and
  - (ii) acquired the information in the course of their duties under the Act, and
- (b) a person who is (or has been) a member, officer, registrar or other staff member of the Tribunal has acquired or acquires any such information in the course of his or her duties as such,

that provision applies to the person as if he or she were included in the particular class of persons and acquired the information in the course of duties under that Act.

## **70 Improper disclosure of information**

A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made—

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act or the *Administrative Decisions Review Act 1997* or other enabling legislation, or
- (c) for the purpose of any legal proceedings arising out of this Act or the *Administrative Decisions Review Act 1997* or other enabling legislation or any report of such proceedings, or
- (d) with other legal excuse.

Maximum penalty—

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units or imprisonment for 12 months, or both.

## **Part 5 Enforcement**

## Division 1 Compliance

### 71 False or misleading statements

A person must not, in any proceedings or application to the Tribunal, provide any information, or make any statement, to the Tribunal knowing that the information or statement is false or misleading in a material respect.

Maximum penalty—50 penalty units or imprisonment for 12 months, or both.

### 72 Contravention of orders of Tribunal

(1) A person must not, without lawful excuse, contravene a designated order of the Tribunal.

Maximum penalty—

(a) in the case of a corporation—100 penalty units, or

(b) in any other case—50 penalty units or imprisonment for 12 months, or both.

(2) A **designated order** of the Tribunal means any of the following—

(a) an order of the Tribunal made under section 64 (Tribunal may restrict disclosures concerning proceedings),

(b) an order of the Tribunal made under section 108(2)(b), (c), (d) or (e) of the [Anti-Discrimination Act 1977](#) or an interim order of the Tribunal made under that Act,

(c) an order of the Tribunal made under section 42 of the [Guardianship Act 1987](#),

(d) any other order of the Tribunal that a provision of this Act or enabling legislation has declared to be a designated order for the purposes of this section.

(3) A person must not, without reasonable excuse, contravene any other order of the Tribunal made under this Act or any other legislation.

Civil penalty provision.

## Division 2 Contempt of Tribunal

### 73 Contempt of Tribunal

(1) The Tribunal has, if it is alleged, or appears to the Tribunal on its own view, that a person is guilty of contempt of the Tribunal committed in the face of the Tribunal or in the hearing of the Tribunal, the same powers as the District Court has in those circumstances in relation to a contempt of the District Court.

#### Note—

Section 27(1) provides that, in the case of proceedings for contempt of the Tribunal, the Tribunal may be constituted by one or more members (being members who are the President or any other member who is a

current or former NSW judicial officer).

- (2) A person is guilty of contempt of the Tribunal if the person does or omits to do any thing that, if the Tribunal were a court of law having power to commit for contempt, would be contempt of that court unless the person establishes that there was a reasonable excuse for the act or omission.
- (2A) Without limiting subsection (2), a person is guilty of contempt of the Tribunal if the person fails, without reasonable excuse, to comply with a summons issued for the purposes of this Act.
- (3) Without limiting subsection (1), the Tribunal may vacate or revoke an order with respect to contempt of the Tribunal.
- (4) For the purposes of this section—
  - (a) sections 199, 200 and 202 of the *District Court Act 1973* apply to the Tribunal and any members constituting the Tribunal in the same way as they apply to the District Court and a Judge of the District Court, and
  - (b) a reference in section 200 of that Act to the registrar of a proclaimed place is taken to be a reference to the principal registrar, and
  - (c) section 201 of that Act applies to a ruling, order, direction or decision of the Tribunal under those provisions as so applied.

**Note—**

Section 201 of the *District Court Act 1973* (as applied by this subsection) provides for appeals to the Supreme Court against contempt decisions of the Tribunal under this section.

- (5) Without limiting the powers of the Tribunal under this section, if it is alleged, or appears to the Tribunal on its own view, that a person is guilty of contempt of the Tribunal (whether committed in the face or hearing of the Tribunal or not), the Tribunal may refer the matter to the Supreme Court for determination.
- (6) The Supreme Court is to dispose of any matter referred to it under this section in the manner it considers appropriate.

**74 No double punishment for both contempt and offence or civil penalty provision contravention**

- (1) An act or omission may be punished as a contempt of the Tribunal even though it could be punished as an offence or a contravention of a civil penalty provision of this Act.
- (2) An act or omission may be punished as an offence or a contravention of a civil penalty provision of this Act even though it could be punished as a contempt of the Tribunal.

- (3) However, a person is not liable to be punished twice if the person's act or omission constitutes—
- (a) both an offence and a contempt of the Tribunal, or
  - (b) both a contravention of a civil penalty provision of this Act and a contempt of the Tribunal.

## **Division 3 Proceedings for offences and civil penalties under this Act**

### **75 Commencement of proceedings**

Proceedings for an offence against a provision of this Act or on an application under section 77 may be commenced only by any of the following persons (an **authorised official**)—

- (a) the Minister,
- (b) a person with the written consent of either the Minister or another person or body authorised by the Minister for that purpose.

### **76 Proceedings for offences**

- (1) Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act may be brought within the period of 12 months of the date on which the offence is alleged to have been committed.

### **77 Proceedings for contravention of civil penalty provision of this Act**

- (1) This section applies to a provision of this Act (a **civil penalty provision** of this Act) if the words "Civil penalty provision" are specified at the end of the provision.

**Note—**

A contravention of a provision of this Act for which a maximum penalty is provided is an offence rather than a contravention of a civil penalty provision of this Act.

- (2) The Tribunal may, on the application of an authorised official, order a person to pay a monetary penalty if the Tribunal is satisfied that the person has contravened a civil penalty provision of this Act.
- (3) The monetary penalty must not exceed—
  - (a) in the case of a contravention by a corporation—\$22,000, or
  - (b) in any other case—\$11,000.
- (4) In determining whether to impose a monetary penalty or the appropriate amount for the penalty, the Tribunal is to have regard to the following matters—

- (a) the deterrent effect of the imposition of a penalty on the contravener,
  - (b) the nature and extent of the contravention,
  - (c) any loss or damage sustained, or gain or benefit obtained, as a result of the contravention,
  - (d) whether the contravention indicates a pattern of behaviour by the contravener of failing to comply with the orders or processes of the Tribunal,
  - (e) the length of time during which the contravention occurred,
  - (f) such other matters as the Tribunal considers relevant.
- (5) Proceedings for a penalty under this section may be brought within the period of 2 years of the date on which the contravention is alleged to have occurred.
- (6) The standard of proof that applies in connection with an application under this section is proof on the balance of probabilities.

**Note—**

The Tribunal must observe the rules of evidence in proceedings under this section. See section 38(3).

- (7) A penalty imposed under this section may be recovered from the person on whom it is imposed in any court of competent jurisdiction as a debt due to the Crown.

## **Division 4 Civil enforcement**

### **78 Recovery of amounts ordered to be paid**

- (1) **Recovery of non-penalty amounts** For the purposes of the recovery of any amount ordered to be paid by the Tribunal (including costs, but not including a civil or other penalty), the amount is to be certified by a registrar.
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of a registrar that—
- (a) is given under subsection (1), and
  - (b) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate,
- operates as such a judgment.
- (4) **Recovery of civil or other penalty amounts** A civil or other penalty ordered to be paid by the Tribunal (other than for a contravention of a civil penalty provision of this Act) may be registered as a judgment debt in a court of competent jurisdiction and is enforceable accordingly.

## **Part 6 Appeals**

### **Division 1 External appeals**

#### **79 Making and determination of external appeals**

- (1) An external appeal may be made to the Tribunal by a person entitled to do so under enabling legislation on such a basis or grounds, or in such circumstances, as may be provided by that legislation.
- (2) In determining an external appeal, the Tribunal may—
  - (a) in the case of enabling legislation that specifies the orders that may be made by the Tribunal on the appeal—make any of those orders, or
  - (b) in any other case—make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following—
    - (i) the appeal to be allowed or dismissed,
    - (ii) the decision under appeal to be confirmed, affirmed or varied,
    - (iii) the decision under appeal to be quashed or set aside,
    - (iv) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,
    - (v) the whole or any part of the case to be reconsidered by the decision-maker whose decision is under appeal, either with or without further evidence, in accordance with the directions of the Tribunal.

### **Division 2 Internal appeals**

#### **80 Making of internal appeals**

- (1) An appeal against an internally appealable decision may be made to an Appeal Panel by a party to the proceedings in which the decision is made.

**Note—**

Internal appeals are required to be heard by the Tribunal constituted as an Appeal Panel. See section 27(1).

- (2) Any internal appeal may be made—
  - (a) in the case of an interlocutory decision of the Tribunal at first instance—with the leave of the Appeal Panel, and
  - (b) in the case of any other kind of decision (including an ancillary decision) of the Tribunal at first instance—as of right on any question of law, or with the leave of the Appeal Panel, on any other grounds.

(3) The Appeal Panel may—

- (a) decide to deal with the internal appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and
- (b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance, to be given in the new hearing as it considers appropriate in the circumstances.

### **81 Determination of internal appeals**

- (1) In determining an internal appeal, the Appeal Panel may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following—
  - (a) the appeal to be allowed or dismissed,
  - (b) the decision under appeal to be confirmed, affirmed or varied,
  - (c) the decision under appeal to be quashed or set aside,
  - (d) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,
  - (e) the whole or any part of the case to be reconsidered by the Tribunal, either with or without further evidence, in accordance with the directions of the Appeal Panel.
- (2) The Appeal Panel may exercise all the functions that are conferred or imposed by this Act or other legislation on the Tribunal at first instance when confirming, affirming or varying, or making a decision in substitution for, the decision under appeal and may exercise such functions on grounds other than those relied upon at first instance.

## **Division 3 Appeals from Tribunal to courts**

### **Note—**

A Division Schedule for a Division of the Tribunal may, in some cases, make special and different provision for appeals to the Supreme Court or another court against certain decisions made by the Tribunal in the Division.

### **82 Interpretation**

- (1) Each of the following kinds of decisions of the Tribunal is an **appealable decision** of the Tribunal for the purposes of this Division—
  - (a) any decision made by an Appeal Panel in an internal appeal,
  - (b) any decision made by the Tribunal in an external appeal,
  - (c) any decision made by the Tribunal in proceedings in which a civil penalty has been imposed by the Tribunal in exercise of its enforcement or general jurisdiction.



**Note—**

An appealable decision includes any ancillary or interlocutory decisions of the Tribunal in such proceedings.

- (2) However, an appealable decision of the Tribunal does not include—
- (a) any decision made by the Tribunal in proceedings for contempt of the Tribunal, or
  - (b) any decision made by an Appeal Panel in an internal appeal against a decision of a registrar.

**Note—**

Section 201 of the *District Court Act 1973* (as applied by section 73) provides for appeals to the Supreme Court against contempt decisions of the Tribunal under that section.

- (3) For the purpose of this Division, the **appropriate appeal court** for an appeal against a decision in proceedings in which a civil penalty has been imposed is—
- (a) if the Tribunal was constituted by one or more senior judicial officers—the Supreme Court, or
  - (b) if the Tribunal was not constituted by or with any senior judicial officers—the District Court.
- (4) A reference to the Tribunal in another provision of this Division is to be read as a reference to an Appeal Panel if the appealable decision of the Tribunal concerned is a decision of an Appeal Panel.
- (5) In this section—
- senior judicial officer** means any of the following—
- (a) a Judge of the District Court,
  - (b) a judicial member of the Industrial Relations Commission,
  - (c) a Judge of the Land and Environment Court,
  - (d) a Judge of the Supreme Court.

### **83 Appeals against appealable decisions**

- (1) A party to an external or internal appeal may, with the leave of the Supreme Court, appeal on a question of law to the Court against any decision made by the Tribunal in the proceedings.
- (2) A person on whom a civil penalty has been imposed by the Tribunal in proceedings in exercise of its enforcement or general jurisdiction may appeal to the appropriate appeal court for the appeal on a question of law against any decision made by the Tribunal in the proceedings.

- (3) The court hearing the appeal may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) the following—
  - (a) an order affirming, varying or setting aside the decision of the Tribunal,
  - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the court.
- (4) Without limiting subsection (3), the appropriate appeal court for an appeal against a civil penalty may substitute its own decision for the decision of the Tribunal that is under appeal.
- (5) Subject to any interlocutory order made by the court hearing the appeal, an appeal under this section does not affect the operation of the appealable decision of the Tribunal under appeal or prevent the taking of action to implement the decision.

#### **84 Practice and procedure for appeals to courts under this Act**

- (1) This section applies in relation to an appeal against a decision of the Tribunal to—
  - (a) the Supreme Court or District Court under this Division, or
  - (b) the Supreme Court, the District Court or another court under any other provision of this Act.
- (2) An appeal to which this section applies must be made—
  - (a) within such time and in such manner as is prescribed by the rules of court for the court to which the appeal is made, or
  - (b) within such further time as the court may allow.
- (3) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal to which this section applies. The rules of court for a court to which such an appeal may be made may make provision for the parties to any such appeal (including the designation of a respondent where the only party to the proceedings from which the appeal is brought was the appellant).

- (4) In this section—

**rules of court** for a court includes the uniform rules under the [Civil Procedure Act 2005](#) if the uniform rules apply to proceedings of that court.

## **Part 7 Miscellaneous**

### **85 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative

power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **86 Seal of Tribunal**

The Tribunal is to have a seal and that seal is to be judicially noticed.

## **87 Authentication of documents**

- (1) Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is—
  - (a) signed by any member or a registrar, or
  - (b) authenticated in a manner prescribed by the regulations.
- (2) Judicial notice is to be taken of the signature of the member concerned or a registrar when appearing on a document issued by the Tribunal.

## **88 Proof of certain matters not required**

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of—

- (a) the constitution of the Tribunal, or
- (b) any decision of the Tribunal, or
- (c) the appointment or qualifications of, or the holding of office by, a member.

### **Note—**

See also section 52 (Proceedings of statutory bodies) of the [Interpretation Act 1987](#).

## **89 Protection of representatives, witnesses and staff members**

- (1) An Australian legal practitioner, or any other person appearing before the Tribunal on behalf of a party in any proceedings, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.
- (3) Any thing done or omitted to be done by a relevant staff member in exercising the functions conferred or imposed on the relevant staff member by or under this or any other Act does not, if the thing was done or omitted to be done in good faith, subject the relevant staff member personally to any action, liability, claim or demand.

### **Note—**

See also clause 4 of Schedule 2 with respect to the protections and immunities of members of the Tribunal when exercising their functions.

(4) In this section—

**barrister** has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

**relevant staff member** means—

- (a) the principal registrar or any other registrar, or
- (b) an assessor appointed in accordance with the procedural rules, or
- (c) any other kind of person prescribed by the regulations who exercises functions in connection with the Tribunal.

## 90 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Note—**

A number of provisions of this Act provide for matters to be prescribed by the procedural rules. The term **procedural rules** is defined in section 4(1) to include the regulations in their application to the practice and procedure of the Tribunal. Procedural rules that make provision as referred to in section 4(4) are not inconsistent with this Act. See section 4(5).

(2) Without limiting subsection (1), the regulations may make provision for or with respect to any of the following matters—

(a) any matter for or with respect to which the Tribunal rules may make provision (including, but not limited to, the matters specified in Schedule 7),

**Note—**

The Tribunal rules cannot be inconsistent with enabling legislation. See section 25(1).

(b) the fees payable in respect of proceedings in the Tribunal, including fees for the following—

- (i) general applications and administrative review applications,
- (ii) external and internal appeals,
- (iii) the filing or lodgment of any document in the Tribunal,
- (iv) the provision of transcripts or recordings of proceedings,
- (v) the issue of summonses or any other document out of the Tribunal,

(c) the fees payable in relation to the use of resolution processes of the Tribunal,

(d) the fees payable for administrative services provided by a registrar or any other officer of the Tribunal, whether in connection with the administration of this Act or

otherwise,

- (e) the waiver, postponement and refund of fees and exemptions from fees,
  - (f) the use of resolution processes conducted under or for the purposes of this Act, including—
    - (i) the kinds of processes that, and the circumstances in which such processes, may be used, and
    - (ii) the persons who may conduct or participate in such processes and their respective functions, and
    - (iii) the payment of costs in connection with the use of such processes, and
    - (iv) the removal or limitation of the civil liability of participants in such processes (for example, liability for defamation), and
    - (v) the disclosure or use in legal proceedings of statements, admissions or other evidence made, provided or disclosed in connection with such processes,
  - (g) the use of telephones, audio visual links or any other means of communication in connection with proceedings in the Tribunal (including enabling witnesses to appear before, or give evidence, by such means),
  - (h) the provision and use of interpreters,
  - (i) the procedure of the Rule Committee.
- (3) The Minister is not to recommend the making of a regulation that prescribes a fee of the kind referred to in subsection (2)(b), (c) or (d) for the exercise of any of the functions of the Tribunal in proceedings that are entered in the Health Practitioner List of the Occupational Division of the Tribunal unless the Minister certifies that the Minister for Health has agreed to the fee.

## 91 Annual and other reports

- (1) **Annual reports** As soon as practicable after 30 June (but on or before 31 December) of each year, the President must provide the Minister with a report (an **annual report**) on the operations of the Tribunal for the period ending on 30 June in that year.
- (2) The Minister is to lay an annual report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) If a House of Parliament is not sitting when the Minister seeks to lay an annual report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (4) An annual report presented under subsection (3)—

- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
- (b) may be printed by authority of the Clerk of the House, and
- (c) if so printed, is taken to be a document published by or under the authority of the House, and
- (d) is to be recorded—
  - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
  - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

- (5) **Other reports** The President may, on behalf of the Tribunal, provide such other reports to the Minister (or any other Minister administering legislation that confers or imposes functions on the Tribunal) concerning any matter that the President considers—
- (a) to be of importance in relation to the administration of this Act or in relation to the jurisdiction of the Tribunal or any matter falling within its jurisdiction, or
  - (b) to be in the public interest.

## **92 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years commencing on the establishment day.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts—

this Act or any other Act that amends this Act

any other Act to the extent that it confers or imposes (or amends an Act or a statutory rule so as to confer or impose) jurisdiction or functions on the Tribunal or to alter or remove any of the jurisdiction or functions of the Tribunal

- (2) If the regulations so provide, any such provision may—
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 Interpretation**

#### **2 Definitions**

- (1) In this Part—

**current tribunal member** of an existing tribunal means a person who, immediately before the establishment day, held office as—

- (a) the head of the tribunal or a division of the tribunal (however described), or
- (b) a deputy head of the tribunal (however described), or
- (c) any other kind of member of the tribunal.

**existing health practitioner tribunal** means each of the following Tribunals established under section 165 of the [Health Practitioner Regulation National Law \(NSW\)](#)—

- (a) the Aboriginal and Torres Strait Islander Health Practice Tribunal of New South Wales,
- (b) the Chinese Medicine Tribunal of New South Wales,
- (c) the Chiropractic Tribunal of New South Wales,
- (d) the Dental Tribunal of New South Wales,
- (e) the Medical Radiation Practice Tribunal of New South Wales,
- (f) the Medical Tribunal of New South Wales,
- (g) the Nursing and Midwifery Tribunal of New South Wales,
- (h) the Occupational Therapy Tribunal of New South Wales,
- (i) the Optometry Tribunal of New South Wales,
- (j) the Osteopathy Tribunal of New South Wales,
- (k) the Pharmacy Tribunal of New South Wales,
- (l) the Physiotherapy Tribunal of New South Wales,
- (m) the Podiatry Tribunal of New South Wales,
- (n) the Psychology Tribunal of New South Wales.

**existing tribunal** means any of the following tribunals—

- (a) the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal established under the [Aboriginal Land Rights Act 1983](#),
- (b) the Administrative Decisions Tribunal of New South Wales established under the [Administrative Decisions Tribunal Act 1997](#),
- (c) the Charity Referees constituted as provided by section 5 of the [Dormant Funds Act 1942](#),
- (d) the Consumer, Trader and Tenancy Tribunal of New South Wales established under the [Consumer, Trader and Tenancy Tribunal Act 2001](#),
- (e) the Guardianship Tribunal constituted under the [Guardianship Act 1987](#),
- (f) each existing health practitioner tribunal,
- (g) the Local Government Pecuniary Interest and Disciplinary Tribunal established under the [Local Government Act 1993](#),
- (h) each local land board constituted under the [Crown Lands Act 1989](#),



- (i) the Vocational Training Appeal Panel constituted by section 62 of the *Apprenticeship and Traineeship Act 2001*.

**relevant amending Act** means each of the following Acts—

- (a) the *Civil and Administrative Tribunal Amendment Act 2013*,
  - (b) the *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*.
- (2) If a provision of this Part provides for a matter or other thing to occur on a specified day, the matter or thing is taken to have occurred at the beginning of the specified day.
- (3) For the purposes of this Part (except clause 5), proceedings are not finally determined if—
- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

## **Division 2 Abolition of existing tribunals and transfer of members**

### **3 Abolition of existing tribunals**

Each existing tribunal is abolished on the establishment day.

### **4 Current tribunal members cease to hold office on establishment day**

- (1) Each current tribunal member of an existing tribunal ceases to hold office as such on the establishment day.
- (2) If a person ceases to hold an office by operation of this clause—
  - (a) the person is not entitled to any remuneration or compensation because of the loss of that office, and
  - (b) the person is appointed to the new office or position in NCAT (if any) specified in clause 5 for the kind of current tribunal member concerned or, if clause 5 does not operate to make an appointment, is eligible (if otherwise qualified) to be appointed as a member of NCAT.
- (3) This clause has effect despite anything to the contrary in any other legislation concerning the circumstances or processes for the removal of (or the vacation of office by) a current tribunal member of an existing tribunal.

## 5 Transfer of current tribunal members to NCAT

- (1) A person who is a current tribunal member of an existing tribunal of a kind specified in Column 1 of the Table to this clause is taken, on and from the establishment day, to have been appointed under this Act to the kind of office or position in NCAT specified in Column 2 next to the kind of current tribunal member specified in Column 1.
- (2) A current tribunal member of an existing tribunal who is appointed as a member of NCAT by operation of this clause is taken—
  - (a) if the current tribunal member's current office was for a term or the member was entitled to hold his or her current office until a specified age—to have been appointed as a term member, or
  - (b) if the current tribunal member held his or her current office only in relation to specified proceedings before the existing tribunal and those proceedings have been transferred to NCAT by clause 6—to have been appointed as an occasional member for the proceedings until the proceedings are finally determined (within the meaning of section 11).
- (3) Despite clause 2 of Schedule 2, a current tribunal member of an existing tribunal who is appointed as a term member of NCAT by operation of this clause is taken to hold his or her new office in NCAT for—
  - (a) if the current tribunal member's current office was for a term—the balance of that term, or
  - (b) if the current tribunal member was entitled to hold his or her current office until a specified age—the period expiring on the day the person attains that age.
- (4) A part-time current tribunal member who is appointed as a term member of NCAT by operation of this clause is taken to have been appointed as a part-time term member of NCAT.
- (5) Clause 5 of Schedule 2 is taken to apply to a current tribunal member of an existing tribunal who is appointed as a term member of NCAT by operation of this clause as if the Minister had made a determination under that clause (on the establishment day) for the member's remuneration to be the same as the remuneration to which the current tribunal member was entitled immediately before the establishment day.

**Note—**

Clause 5 of Schedule 2 provides that the remuneration of a term member cannot be reduced during the member's term of office. However, the clause also provides that a member who is a Judge of a New South Wales Court is not entitled to remuneration under this Act while receiving remuneration as a Judge.

- (6) If a person is appointed as a member of NCAT by operation of this clause—
  - (a) in the case of appointment as a presidential member—the Governor may issue an

appropriate commission under the public seal of the State to the person, and

(b) in the case of appointment as a non-presidential member—the Minister may issue an appropriate instrument of appointment to the person.

- (7) A person's appointment as a member of NCAT is effective whether or not a commission or instrument of appointment is issued under subclause (6).
- (8) This clause operates to appoint a person who holds office as a current tribunal member of more than one existing tribunal to only one office or position in NCAT. If there is a difference in seniority in the offices or positions in NCAT concerned, the person is taken to have been appointed to the most senior of the offices or positions in NCAT.

**Note—**

Section 9(1) lists the classes of members of NCAT in order of seniority.

- (9) This clause does not—
- (a) apply to a current tribunal member of an existing tribunal who is appointed under this Act to be a member of NCAT before the establishment day, or
- (b) prevent a current tribunal member who becomes a member of NCAT by operation of this clause from—
- (i) being appointed, with the consent of the person, to a different or additional office in NCAT under this Act, or
- (ii) vacating office, subject to subclauses (2) and (3), in accordance with the provisions of this Act.
- (10) A reference in the Table to this clause to a **professional non-judicial member** of the Administrative Decisions Tribunal is a reference to a non-judicial member of that Tribunal who—
- (a) is an architect within the meaning of the [Architects Act 2003](#), or
- (b) is a registered surveyor within the meaning of the [Surveying and Spatial Information Act 2002](#), or
- (c) is a registered health practitioner within the meaning of the [Health Practitioner Regulation National Law \(NSW\)](#), or
- (d) is a veterinary practitioner within the meaning of the [Veterinary Practice Act 2003](#), or
- (e) has been appointed as a non-judicial member because he or she is a member of another particular profession or occupation.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Current tribunal member</b>	<b>New NCAT office or position</b>
<b>Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal</b>	
Member	Senior member
<b>Administrative Decisions Tribunal</b>	
President	Deputy President
Deputy President	Principal member
Non-presidential judicial member	Senior member
Professional non-judicial member	Senior member
Non-judicial member (other than a professional non-judicial member)	General member
<b>Charity Referees under the <i>Dormant Funds Act 1942</i></b>	
Chairperson of the Charity Referees	Principal member
Person appointed under section 5(1)-(3) of the <i>Dormant Funds Act 1942</i>	General member
<b>Consumer, Trader and Tenancy Tribunal</b>	
Chairperson	Deputy President
Deputy Chairperson (Determinations)	Principal member
Deputy Chairperson (Registry and Administration)	Non-principal registrar
Senior member	Senior member
Other member	General member
<b>Existing health practitioner tribunal</b>	
Chairperson	Principal member
Deputy Chairperson	Principal member
<b>Guardianship Tribunal</b>	
President	Deputy President
Deputy President	Principal member

Legal member (other than the President or a Deputy President) Senior member

Professional member Senior member

Community member General member

### **Local Government Pecuniary Interest and Disciplinary Tribunal**

Member Senior member

### **Local land boards under the *Crown Lands Act 1989***

Chairperson Senior member

Member (other than the Chairperson) General member

## **Division 3 Proceedings concerning abolished existing tribunals**

### **Subdivision 1 Interpretation**

#### **6 Interpretation**

(1) In this Division—

***part heard proceedings*** means pending proceedings where the court or existing tribunal in which the proceedings were instituted or commenced had begun to hear (but had not determined) the proceedings before the establishment day.

***pending proceedings*** are proceedings (including appeals) that—

- (a) were instituted or commenced before the establishment day, and
- (b) have not been finally determined before that day by the court or existing tribunal in which the proceedings were instituted or commenced.

**Note—**

See clause 2(3) as to the meaning of finally determined proceedings.

***unexercised right*** means a right (including a right exercisable only with leave) that—

- (a) was available to be exercised immediately before the establishment day, and
- (b) had not yet been exercised before that day.

***unheard proceedings*** means pending proceedings that had not been heard before the establishment day by the court or existing tribunal in which the proceedings were instituted or commenced.

- (2) The provisions of this Division, in their application to local land boards constituted under the *Crown Lands Act 1989*, extend only to those functions of such boards that will become the functions of NCAT on and from the establishment day.

**Note—**

Certain non-adjudicative functions of local land boards will become functions of the Director-General (within the meaning of the *Crown Lands Act 1989*) instead of NCAT as a result of amendments made by the *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*.

## **Subdivision 2 Determination of pending proceedings**

### **7 Pending proceedings before existing tribunals transfer to NCAT**

- (1) Unheard proceedings in an existing tribunal are taken, on and from the establishment day, to have been duly commenced in NCAT and may be heard and determined instead by NCAT.
- (2) In relation to part heard proceedings in an existing tribunal, the person or persons constituting the tribunal for those proceedings—
  - (a) are to continue, on and from the establishment day, to hear the matter, and to determine the matter, sitting as NCAT, and
  - (b) are taken to have been duly appointed as members of NCAT for the purposes of determining the matter even if the person or persons have not been appointed as members of NCAT by or under another provision of this Act, and
  - (c) may have regard to any record of the proceedings before the existing tribunal, including a record of any evidence taken in the proceedings before the existing tribunal.
- (3) For the purposes of subclauses (1) and (2)—
  - (a) NCAT has and may exercise all the functions that the relevant existing tribunal had immediately before its abolition, and
  - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had this Act and the relevant amending Acts not been enacted continue to apply.

### **8 Pending court proceedings concerning existing tribunals may be completed**

- (1) This clause applies to pending proceedings before a court on an appeal against, or for the judicial review of, a decision of an existing tribunal.
- (2) A court in proceedings to which this clause applies may, on and from the establishment day, continue to deal with the proceedings until they are concluded.
- (3) For this purpose—

- (a) the court continues to have and may exercise all the functions that the court had in relation to the proceedings immediately before the establishment day, and
  - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had this Act and the relevant amending Acts not been enacted continue to apply.
- (4) Without limiting subclause (3), if the original powers of the court included the power to remit the proceedings to be heard and decided again by the existing tribunal concerned, the court may in determining the proceedings—
- (a) remit the proceedings instead to NCAT, and
  - (b) make such other orders as it considers appropriate to facilitate the remitting of the proceedings to NCAT.

### **Subdivision 3 Exercise of certain unexercised rights**

#### **9 Certain unexercised rights to make applications or appeals to existing tribunals may continue to be exercised in NCAT**

- (1) This clause applies to each of the following unexercised rights (an ***existing unexercised application or appeal right***)—
- (a) an unexercised right to apply to an existing tribunal for it to make a decision at first instance concerning a matter,
  - (b) an unexercised right to apply to an existing tribunal for a review of a decision of another person or body,
  - (c) an unexercised right to appeal to an existing tribunal against a decision of another person or body.
- (2) A person who has an existing unexercised application or appeal right may apply or appeal to NCAT for the exercise of the same functions that could have been exercised by the existing tribunal to which the right relates had the existing tribunal not been abolished.

**Note—**

An application or appeal under this clause that would have required leave before the establishment day will still require such leave. Also, any time limits under existing law for making the application or appeal will continue to apply to applications or appeals under this clause. See subclause (3).

- (3) For the purposes of subclause (2)—
- (a) NCAT has and may exercise all the functions that the relevant existing tribunal would have had in relation to the application or appeal if it had been made before the establishment day (including any functions relating to the granting of leave to apply or appeal), and

- (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to apply or appeal) that would have applied to or in respect of the application or appeal had this Act and the relevant amending Acts not been enacted continue to apply.

**10 Certain unexercised rights to appeal against decisions of existing tribunals may continue to be exercised**

- (1) This clause applies to each of the following unexercised rights (an **existing unexercised appeal right**)—
  - (a) an unexercised right to appeal against a decision of the Administrative Decisions Tribunal or another tribunal or body to an Appeal Panel of that Tribunal,
  - (b) an unexercised right to appeal against a decision of an existing tribunal to a court.
- (2) A person who has an existing unexercised appeal right may appeal against the decision of an existing tribunal to which that right relates—
  - (a) if the decision was originally appealable to an Appeal Panel of the Administrative Decisions Tribunal—to an Appeal Panel of NCAT, or
  - (b) if it was originally appealable to a particular court—to that court.

**Note—**

An appeal under this clause that would have required leave before the establishment day will still require such leave. Also, any time limits under existing law for appealing will continue to apply to appeals under this clause. See subclauses (3) and (4).

- (3) For the purposes of an appeal made to an Appeal Panel of NCAT under this clause—
  - (a) the Appeal Panel has and may exercise all the functions that an Appeal Panel of the Administrative Decisions Tribunal would have had in relation to the appeal if it had been made before the establishment day (including any functions relating to the granting of leave to appeal), and
  - (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to appeal) that would have applied to or in respect of the appeal had this Act and the relevant amending Acts not been enacted continue to apply.
- (4) For the purposes of an appeal made to a court under this clause—
  - (a) the court continues to have and may exercise all the functions that the court would have had if the appeal had been made to it before the establishment day (including any functions relating to the granting of leave to appeal), and
  - (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to appeal) that would have applied to or in



respect of such an appeal had this Act and the relevant amending Acts not been enacted continue to apply.

- (5) Without limiting subclauses (3) and (4), if the original powers of an Appeal Panel of the Administrative Decisions Tribunal or a court (as the case requires) would have included the power to remit the proceedings to be heard and decided again by the existing tribunal concerned, the Appeal Panel of NCAT or court may in determining an appeal under this clause—
- (a) remit the proceedings instead to NCAT, and
  - (b) make such other orders as it considers appropriate to facilitate the remitting of the proceedings to NCAT.

## **Subdivision 4 Reviews of certain existing orders and renewal of certain proceedings**

### **11 Reviews of existing orders under [Guardianship Act 1987](#)**

- (1) This clause applies to each of the following kinds of orders under the [Guardianship Act 1987](#)—
- (a) a guardianship order,
  - (b) a financial management order,
  - (c) an order appointing a person as the manager of a protected person's estate.
- (2) Without limiting clause 14, the provisions of the [Guardianship Act 1987](#) that enable NCAT to make an order to which this clause applies are taken to extend to any such order made by the Guardianship Tribunal before the establishment day as if NCAT had made that order.

### **12 Renewal of proceedings before CTTT**

Without limiting clause 14, the provisions of clause 8 (Renewal of proceedings in respect of certain Division decisions) of Schedule 4 are taken to extend to an order made by the Consumer, Trader and Tenancy Tribunal before the establishment day as if the order had been made by NCAT in exercise of functions allocated to the Consumer and Commercial Division of NCAT.

## **Subdivision 5 Allocation of transitional proceedings and enforcement of existing orders**

### **13 Allocation of transitional proceedings to Divisions of the Tribunal**

- (1) This clause applies to any proceedings (***transitional proceedings***) that—

- (a) are permitted or required to be determined by NCAT under this Division instead of an abolished existing tribunal, or
  - (b) are remitted by a court or an Appeal Panel of NCAT under this Division to NCAT for reconsideration or redetermination.
- (2) Unless the regulations provide otherwise, the function of determining transitional proceedings is allocated to the Divisions of the Tribunal as follows—
- (a) if NCAT is determining the proceedings instead of the Consumer, Trader and Tenancy Tribunal or is determining proceedings under the *Dividing Fences Act 1991* or *Retail Leases Act 1994* instead of a local land board or the Administrative Decisions Tribunal—the proceedings are allocated to the Consumer and Commercial Division,
  - (b) if NCAT is determining the proceedings instead of the Guardianship Tribunal—the proceedings are allocated to the Guardianship Division,
  - (c) if NCAT is determining the proceedings instead of an Appeal Panel of the Administrative Decisions Tribunal—the proceedings are not allocated to any particular Division of the Tribunal in accordance with section 16(4),
  - (d) if NCAT, in determining the proceedings, would be required to exercise functions under legislation that correspond (or substantially correspond) to functions that are now allocated to the Occupational Division—the proceedings are allocated to the Occupational Division,
  - (e) if NCAT is determining any other proceedings instead of an existing tribunal—the proceedings are allocated to the Administrative and Equal Opportunity Division.
- (3) Despite anything to the contrary in this Act or other legislation, the President is, where practicable, to constitute NCAT for the purposes of transitional proceedings (other than part heard proceedings) in a manner that is consistent with the constitution requirements that would have been applicable for the kind of proceedings in the existing tribunal concerned.

**Note—**

For constitution requirements in relation to part heard transitional proceedings, see clause 7(2).

#### **14 Orders of existing tribunals**

- (1) An existing order of an existing tribunal made under other legislation is taken, on and from the establishment day, to be an order made by NCAT under the corresponding provision of that legislation (as amended by a relevant amending Act) or this Act (as the case may be).
- (2) This clause is subject to the other provisions of this Schedule.

(3) In this clause—

**existing order** of an existing tribunal is an order made by the tribunal before the establishment day, and includes an order that would have come into effect on or after the establishment day.

## Division 4 Miscellaneous

### 15 Making of first principal Regulation

Part 2 of the *Subordinate Legislation Act 1989* is taken to apply to the first principal regulation (within the meaning of that Act) that is made under this Act as if the Minister administering the *Subordinate Legislation Act 1989* had given a certificate under section 6(1)(b) of that Act with respect to the regulation.

### 16 Expiration of current period

If, for any purpose, time had commenced to run under a provision of other legislation in relation to an existing tribunal (but had not expired) before the establishment day, it expires for the corresponding purpose under that legislation (as amended by a relevant amending Act) or this Act, as the case may be, at the time at which it would have expired if the tribunal had not been abolished.

### 17 Updating references to abolished existing tribunals and their functions

- (1) **Legislative provisions to which clause applies** This clause applies to a provision (an **affected legislative provision**) of any other Act or any instrument made under any other Act (whether enacted or made before or after the commencement of this clause) other than an excluded provision.
- (2) Each of the following is an **excluded provision** for the purposes of subclause (1)—
  - (a) a provision of this Act or an instrument made under this Act,
  - (b) a provision of the *Administrative Decisions Review Act 1997* or an instrument made under that Act,
  - (c) a provision of the *Public Sector Employment and Management Act 2002* or *Government Sector Employment Act 2013* or an instrument made under either Act,
  - (d) a provision of a relevant amending Act,
  - (e) a provision of any other Act or instrument made under any other Act that contains a reference to which this clause would otherwise have applied if that reference was inserted or substituted by, or retained despite, an amendment made to the provision by a relevant amending Act,
  - (f) a spent savings or transitional provision of any other Act or an instrument made

under any other Act,

(g) a provision of an Act or instrument made under an Act (or a provision belonging to a class of such provisions) prescribed by the regulations.

- (3) **References to existing tribunals** A reference in an affected legislative provision to an existing tribunal is to be read, on and from the applicable day, as a reference to NCAT.
- (4) **References to members of existing tribunals** A reference in an affected legislative provision to a particular kind of member of an existing tribunal is to be read, on and from the applicable day, as a reference to the corresponding member, if any, of NCAT (as set out in the Table to clause 5).
- (5) **References to [Administrative Decisions Tribunal Act 1997](#)** A reference in an affected legislative provision to the [Administrative Decisions Tribunal Act 1997](#) is to be read, on and from the applicable day, as a reference to the [Administrative Decisions Review Act 1997](#).
- (6) **References to renumbered, relocated or repealed provisions** A reference in an affected legislative provision to a provision of legislation that is renumbered, relocated or repealed by a relevant amending Act is to be read, on and from the applicable day, as—
- (a) for a provision of legislation that is renumbered—a reference to the provision as renumbered, or
- (b) for a provision that is relocated or repealed—a provision (if any) of this Act, the [Administrative Decisions Review Act 1997](#) or legislation amended by a relevant amending Act that corresponds, or substantially corresponds, to the provision.
- (7) **References to functions of existing tribunals** Without limiting subclauses (2)–(6), an affected legislative provision that confers or imposes a function on an existing tribunal is to be read, on and from the applicable day, as conferring or imposing the function instead on NCAT.
- (8) For the purposes of applying subclause (7), a reference to a review of a decision by the Administrative Decisions Tribunal is to be read as a reference to an administrative review of the decision by NCAT under the [Administrative Decisions Review Act 1997](#).
- (9) Unless the regulations provide otherwise, the provisions of clause 13(2) and (3) apply to functions that are conferred or imposed on NCAT by operation of this clause in the same way as they apply to the function of determining transitional proceedings under clause 13.
- (10) **Regulation-making powers** The regulations may—
- (a) make provision, despite this clause, for or with respect to the updating of

references in any document (including a document containing an affected legislative provision) to an existing tribunal or its functions with references to NCAT and corresponding functions and provisions, or

- (b) declare whether a specified provision is, or is not, a corresponding provision for the purposes of subclause (6)(b), or
- (c) without limiting clause 1, make provision for savings or transitional matters consequent on the operation of this clause or a regulation made for the purposes of this clause (including the allocation of functions that are transferred to NCAT by operation of this clause to Divisions of NCAT).

(11) **Definition** In this clause—

***applicable day*** means—

- (a) in relation to an affected legislative provision that is in force or effect on the establishment day—the establishment day, or
- (b) in relation to an affected legislative provision that comes into force or effect after the establishment day—the day on which the provision comes into force or effect.

### **18 Amendments concerning Divisions of NCAT**

The renaming of a Division of NCAT, or the substitution of a Division Schedule for a Division of NCAT, by a relevant amending Act does not affect the validity of any appointment, assignment or designation of a person made with respect to the Division before that renaming or substitution.

### **19 General savings**

- (1) If anything done, initiated or commenced under other legislation in relation to an existing tribunal before the establishment day and still having effect or not completed immediately before that day could have been done, initiated or commenced under that legislation (as amended by a relevant amending Act) or this Act if the relevant amending Act or this Act had been in force when the thing was done, initiated or commenced—
  - (a) the thing done continues to have effect, or
  - (b) the thing initiated or commenced may be completed as if it had been done, initiated or commenced under the other legislation (as amended) or this Act.
- (2) This clause is subject to any express provision of this Act on the matter.

## **Part 3 Provision consequent on enactment of **Courts and Crimes****

## Legislation Amendment Act 2015

### 20 Renaming of Health Practitioner Division List

The renaming of the Health Practitioner Division List of the Occupational Division of the Tribunal by the *Courts and Crimes Legislation Amendment Act 2015* as the Health Practitioner List does not affect the continuation of any proceedings entered in the List before its renaming or the appointment of the List Manager for the List.

## Part 4 Provision consequent on enactment of Legal Profession Uniform Law Application Legislation Amendment Act 2015

### 21 References to Legal Profession Uniform Law (NSW)

A reference in this Act (where relevant) to—

- (a) the *Legal Profession Uniform Law (NSW)* includes a reference to the *Legal Profession Act 2004*, and
- (b) a provision of the *Legal Profession Uniform Law (NSW)* includes a reference to the corresponding provision of the *Legal Profession Act 2004*.

## Part 5 Provisions for COVID-19 pandemic

### Divisions 1-4

### 22-29 (Repealed)

### Division 5

### 30 (Repealed)

### 31 Continued legal effect after prescribed period of things done during period

Anything done, or omitted to be done, during the period starting on 25 March 2020 and ending on 26 March 2022 (the **prescribed period**) pursuant to a provision of this Part (or of a regulation made for the purposes of this Part) remains as legally effective after the prescribed period as it was during that period.

### 32 (Repealed)

## Part 6 Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021

### 33 Appointment of guardian ad litem

- (1) A person selected before the commencement date by the relevant administrator to be a guardian ad litem in proceedings in the Tribunal is taken to have been validly appointed as a guardian ad litem if—

- (a) a request was made to the administrator by or on behalf of the Tribunal for a person to be selected as a guardian ad litem for—
  - (i) a party in the proceedings, or
  - (ii) a child affected by the proceedings, and
- (b) the administrator notified the Tribunal of the name of the person selected.

(2) In this clause—

**commencement date** means the date on which section 45(4C) and (4D) commenced.

**relevant administrator**, in relation to the selection of a guardian ad litem, means the person responsible at the time of the selection for administering the body known as the Guardian Ad Litem Panel, as constituted from time to time, before this Part commenced.

## **Schedule 2 Provisions relating to members**

### **1 Acting President**

- (1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy President to be Acting President during the absence of the President from duty.
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (5) In this clause, **absence from duty** includes a vacancy in the office of President.

### **2 Terms of appointment for term members**

Subject to this Act, a term member holds office for a period (not exceeding 5 years) specified in the member's instrument of appointment, but is eligible for re-appointment.

### **3 Oaths**

The Governor may require an oath to be taken by a presidential member.

### **4 Protection and immunities of member**

A member has, in the exercise of functions performed as a member, the same protection

and immunities as a Judge of the Supreme Court.

## 5 Remuneration of members

- (1) A member is entitled to be paid—
  - (a) such remuneration as is determined by the Minister, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) Without limiting subclause (1), the Minister may make different determinations for the purposes of this clause for different classes of members or members exercising different classes of functions.
- (3) However, the Minister may not make a determination in relation to a term member that operates to reduce the remuneration of the member during his or her term of office.
- (4) A member is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.
- (5) In this clause, **Judge of a New South Wales Court** includes a NSW judicial officer.

## 6 Vacancy in office of President

- (1) The President cannot be removed from office except by the Governor on an address from both Houses of Parliament in the same session seeking removal on the ground of proved misbehaviour or incapacity and in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers Act 1986*. However, simply because the President is removed from office under this subclause does not affect the person's tenure as a judicial officer.
- (2) The President may be suspended or retired from office in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers Act 1986*.
- (3) If the President is suspended from office and is remunerated as President at the time of the suspension, he or she is entitled to be paid remuneration as President during the period of suspension at the current rate applicable to the office.
- (4) The office of President becomes vacant if the President—
  - (a) dies, or
  - (b) is removed from office or retires in accordance with this clause, or
  - (c) completes a term of office and is not re-appointed, or
  - (d) resigns the office by written instrument addressed to the Governor, or



(e) ceases to hold office as a Judge of the Supreme Court.

### **7 Vacancy in office of member (other than President)**

(1) The office of a member (other than the President) becomes vacant if the member—

(a) dies, or

(b) in the case of a term member—completes a term of office and is not re-appointed, or

(c) in the case of an occasional member—when the proceedings in relation to which the member has been appointed as an occasional member have been finally determined for the purposes of section 11, or

(d) resigns the office by written instrument addressed to the Minister, or

(e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(i) is removed from office under subclause (2).

(2) The Governor may remove a member (other than the President) from office for incapacity, incompetence or misbehaviour.

### **8 Members and former members may complete unfinished matters**

(1) This clause applies to a member (an **affected member**) dealing with any matters relating to proceedings before the Tribunal that have been heard or partly heard (or were otherwise the subject of deliberations) by the member if, during the proceedings, the member—

(a) ceases to have a qualification specified by a Division Schedule for a Division of the Tribunal or enabling legislation for participation in the proceedings other than because of any of the following reasons—

(i) misconduct or unsatisfactory conduct of the member,

- (ii) the mental incapacity of the member,
  - (iii) the member becoming bankrupt or insolvent, or
- (b) ceases to be a member because of the expiration of the period of the member's appointment,

or both.

- (2) An affected member may, despite becoming an affected member, complete or otherwise continue to deal with any matters in the proceedings concerned.
- (3) While completing or otherwise dealing with matters referred to in subclause (2), the affected member is taken to have and may exercise all the rights and functions of a member that the affected member had immediately before becoming an affected member.

## 9 Leave for term members

- (1) The entitlement of a term member to annual and other leave is to be as stated in the instrument of appointment as a member.
- (2) A member may be granted leave—
  - (a) in the case of the President—by the Minister, and
  - (b) in any other case—by the President.
- (3) This clause is subject to clause 5.

## 10 Superannuation and leave—preservation of rights for term members

- (1) In this clause—

**eligible member** means a term member who, immediately before becoming such a member, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

- (2) An eligible member—
  - (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
  - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as a member.

- (3) Service by the eligible member as a member is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
- (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

#### **11 Provisions where Judge is holding office as member**

- (1) The appointment of a person who is the holder of a judicial office as a member, or service as a member by a person who is the holder of a judicial office, does not affect—
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause—

**judicial office** means an office of a Judge of a court of New South Wales (including a NSW judicial officer).

#### **12 Delegations by the President and Division Heads**

- (1) The President may—
  - (a) delegate to a Division Head of a Division of the Tribunal or other member any of the functions of the President (other than this power of delegation), or
  - (b) delegate to a registrar or any other member of staff of the Tribunal any of the functions of the President (other than this power of delegation) prescribed by the procedural rules.

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (2) The Division Head of a Division of the Tribunal may—
- (a) delegate to a List Manager of the Division any of the functions of the Division Head (other than this power of delegation), or
  - (b) delegate to a registrar or any other member of staff of the Tribunal any of the functions of the Division Head (other than this power of delegation) prescribed by the procedural rules.

**13 Disclosure of pecuniary and other interests**

The regulations may make provision for or with respect to—

- (a) the disclosure by members of interests (whether pecuniary or otherwise) that could conflict with the proper performance of the functions of a member in proceedings, and
- (b) the participation of members in proceedings in which there may be a conflict of interest (including the effect of participation on the validity of decisions made in the proceedings).

**14 Effect of other Acts**

- (1) The *Government Sector Employment Act 2013* does not apply to the appointment of a member, and the holder of the office is not, as holder, subject to that Act.
- (2) If, by or under any Act, provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

**15 Application of Schedule to acting members**

- (1) Subject to subclause (2), all of the provisions of this Schedule apply to acting members.
- (2) Clause 2 does not apply to an appointment by or under section 15.
- (3) In this clause, **acting member** means a person appointed by or under this Act to act as a member.

## Schedule 3 Administrative and Equal Opportunity Division

### Part 1 Interpretation

#### 1 Definitions

(1) In this Schedule—

**Division decision** means a decision of the Tribunal in exercise of a Division function.

**Division function** means a function of the Tribunal allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**lands legislation** means the following legislation—

- (a) the *Agricultural Industry Services Act 1998*,
- (b) the *Australian Oil Refining Agreements Act 1954*,
- (c) the *Commons Management Act 1989*,
- (d) the *Crown Land Management Act 2016*,
- (e), (f) (Repealed)
- (g) the *Local Land Services Act 2013*,
- (h) the *Port Kembla Inner Harbour Construction and Agreement Ratification Act 1955*,
- (i) the *Water Act 1912*.
- (j), (k) (Repealed)

**substantive Division function** means a Division function other than—

- (a) a Division function exercised in connection with the making of an ancillary or interlocutory decision of the Tribunal, or
- (b) a Division function exercised by a registrar.

**the Division** means the Administrative and Equal Opportunity Division of the Tribunal.

(2) Except as otherwise provided by this Schedule, a provision of this Schedule that provides for, or limits or excludes, an appeal against a decision of the Tribunal that is made for the purposes of specified legislation (or a specified provision of legislation) is taken to extend to any ancillary or interlocutory decision of the Tribunal in the

proceedings in which that decision was made.

## **Part 2 Composition of Division**

### **2 Division members**

The Division is to be composed of the following members—

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

## **Part 3 Functions of Division**

### **3 Functions allocated to Division**

(1) The following functions of the Tribunal are allocated to the Division—

- (a) the functions of the Tribunal in relation to the following legislation—

*Anti-Discrimination Act 1977*

*Building Products (Safety) Act 2017*

*Child Protection (Working with Children) Act 2012*

*Combat Sports Act 2008*

*Combat Sports Act 2013*

*Community Services (Complaints, Reviews and Monitoring) Act 1993*

*Dormant Funds Act 1942*

*Education Act 1990*

*Government Information (Public Access) Act 2009*

lands legislation

*National Disability Insurance Scheme (Worker Checks) Act 2018*

*Native Title (New South Wales) Act 1994*

*Paintball Act 2018*

*Public Health Act 2010*

*Victims Rights and Support Act 2013*

- (b) any other function of the Tribunal in relation to legislation that is not specifically allocated to any other Division of the Tribunal by another Division Schedule for a

Division.

- (2) The functions allocated to the Division by subclause (1) include—
- (a) any functions conferred or imposed on the Tribunal by statutory rules made under legislation referred to in that subclause, and
  - (b) any functions conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of proceedings for the exercise of functions allocated by that subclause (including the making of ancillary and interlocutory decisions of the Tribunal), and
  - (c) in relation to the exercise of administrative review jurisdiction in this Division—any functions conferred or imposed on the Tribunal by or under the *Administrative Decisions Review Act 1997* in connection with the exercise of such jurisdiction.
- (3) The President may, if the President considers it appropriate, reallocate a function of the Division allocated under subclause (1)(b) to another Division of the Tribunal.

## Part 4 Special constitution requirements

### Note—

If special constitution requirements for the exercise of a Division function are not specified by the following provisions, the Tribunal may be constituted in accordance with the general provisions of section 27 of this Act. The Tribunal may also be constituted in accordance with the general provisions of that section in connection with the exercise of Division functions for the purposes of making ancillary or interlocutory decisions of the Tribunal.

### 4 *Anti-Discrimination Act 1977*

The Tribunal, when exercising its substantive Division functions for the purposes of the *Anti-Discrimination Act 1977*, is to be constituted by—

- (a) 1 Division member who is an Australian lawyer, or
- (b) 2 or more Division members (with at least one being an Australian lawyer).

### 5 *Combat sports*

The Tribunal, when exercising its substantive Division functions for the purposes of the *Combat Sports Act 2008* or *Combat Sports Act 2013*, is to be constituted by 1 Division member who is an Australian lawyer.

### 6 *Dormant Funds Act 1942*

The Tribunal, when exercising its substantive Division functions for the purposes of the *Dormant Funds Act 1942*, is to be constituted by—

- (a) 1 Division member who is an Australian lawyer, or
- (b) 2 or more Division members (with at least one being an Australian lawyer).

## **7 Education Act 1990**

The Tribunal, when exercising its substantive Division functions for the purposes of the *Education Act 1990*, is to be constituted by—

- (a) 1 Division member who is an Australian lawyer, or
- (b) 2 or more Division members (with at least one being an Australian lawyer).

## **8 Public Health Act 2010**

- (1) The Tribunal, when exercising its substantive Division functions for the purposes of section 64 of the *Public Health Act 2010*, is to be constituted by one Division member who is an Australian lawyer.
- (2) The Tribunal, when exercising its substantive Division functions for the purposes of section 7, 65 or 66 of that Act, is to be constituted by 3 Division members as follows—
  - (a) 1 presidential member,
  - (b) 1 member who is an Australian lawyer,
  - (c) 1 member who is a registered medical practitioner with experience in public health matters.

## **Part 5 Special practice and procedure**

### **9 Rights of representation and appearance**

- (1) Despite section 45 of this Act, a party to proceedings for the exercise of a Division function is entitled to be represented by an Australian legal practitioner without requiring the leave of the Tribunal.

**Note—**

The leave of the Tribunal will, however, be required under section 45 of this Act in other cases.

- (2) The Ombudsman has a right to appear in proceedings for the purposes of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* before the Tribunal in order to assist the Tribunal (otherwise than as a party in proceedings).
- (3) The Secretary (within the meaning of the *Teaching Service Act 1980*) is entitled to appear and be represented at any proceedings arising out of an administrative review application made by a person under Part 4 of the *Child Protection (Working with Children) Act 2012*.
- (4) The following persons have a right to appear and be heard in proceedings for the exercise of a Division function for the purposes of the *Government Information (Public Access) Act 2009*—
  - (a) the Information Commissioner,



- (b) the Privacy Commissioner,
- (c) any person who could be aggrieved by a decision of the Tribunal on an administrative review on an application made under Division 4 of Part 5 of that Act.

**10 Parties to proceedings relating to complaint under [Anti-Discrimination Act 1977](#)**

- (1) The parties to proceedings before the Tribunal relating to a complaint under the [Anti-Discrimination Act 1977](#) are—
  - (a) the complainant who, for the purposes of that Act, is taken to be the applicant, and
  - (b) the respondent, and
  - (c) any other person who has been made a party to the proceedings under this Act, and
  - (d) the Attorney General if the Attorney General intervenes under this Act.
- (2) Without limiting section 44 of this Act, the Tribunal may substitute a complainant or respondent if the Tribunal is of the opinion that the other parties to the proceedings will not be prejudiced by the substitution.
- (3) The Tribunal may remove or agree to the withdrawal of a complainant from proceedings if the Tribunal is satisfied that the complainant does not wish to proceed with the complaint.

**11 Non-disclosure orders for [Public Health Act 2010](#)**

- (1) This clause applies to proceedings for the exercise of a Division function for the purposes of Division 4 (Public health orders for Category 4 and 5 conditions) of Part 4 of the [Public Health Act 2010](#).
- (2) If an application for an order under section 64 (Tribunal may restrict disclosures concerning proceedings) of this Act is made by a party to proceedings to which this clause applies, the onus is on the other party to show cause why the application should be refused.

**12 Costs for [Dormant Funds Act 1942](#)**

- (1) Despite section 60(1) and (2) of this Act, the Tribunal may, in its discretion, award costs in relation to proceedings for the exercise of a Division function for the purposes of the [Dormant Funds Act 1942](#).
- (2) Without limiting section 60(4) of this Act, the Tribunal may determine that costs are to be paid out of the fund to which such proceedings relate.

- (3) The Tribunal may, in determining the costs in relation to a successful appeal for the purposes of section 15B of *Dormant Funds Act 1942* against a determination of the Commissioner of Dormant Funds, order the trustees of the fund to which the appeal relates to pay out of the fund the costs incurred by the Commissioner before the appeal in making the determination.
- (4) Costs payable out of a fund because of an order made under subclause (3) must not exceed 1% of the value of the fund (as determined by the Tribunal).
- (5) In this clause—  
**costs** includes the costs of, or incidental to, proceedings.  
**fund** has the same meaning as in the *Dormant Funds Act 1942*.

### **13 Costs not to be awarded for certain proceedings**

Despite section 60 of this Act, the Tribunal may not award costs in proceedings for any of the following Division decisions—

- (a) (Repealed)
- (b) a decision for the purposes of the *Child Protection (Working with Children) Act 2012*,
- (b1) a decision for the purposes of the *National Disability Insurance Scheme (Worker Checks) Act 2018*,
- (c) an administrative review decision for the purposes of the *Victims Rights and Support Act 2013*.

### **13A Special provisions relating to decisions under Building Products (Safety) Act 2017**

The functions of the Tribunal in relation to the *Building Products (Safety) Act 2017* are subject to sections 81 and 82 of that Act.

### **13B Review proceedings under Part 5 of Victims Rights and Support Act 2013**

Despite section 46 of this Act, the Tribunal may not compel a witness to give evidence or produce documents in review proceedings under Part 5 of the *Victims Rights and Support Act 2013* if the witness is the victim of the relevant offence (within the meaning of that Part) to which the review proceedings relate.

## **Part 6 Appeals**

### **Division 1 External appeals**

#### **14 External appeals under lands legislation**

- (1) Except as otherwise provided by the lands legislation, an external appeal made under

that legislation—

(a) may be made without requiring the leave of the Tribunal concerning the grounds for the appeal, and

(b) is to be by way of a rehearing.

(2) Fresh evidence, or evidence in addition to or in substitution for the evidence received by the external decision-maker, may be given in the appeal with the leave of the Tribunal.

## **Division 2 Appeals against certain Division decisions**

### **15 Division decisions that are not internally appealable**

Despite section 32 of this Act, each of the following Division decisions is not an internally appealable decision for the purposes of an internal appeal—

- (a) a decision of the Tribunal for the purposes of section 96 of the *Anti-Discrimination Act 1977* with respect to the granting of leave for the purposes of that section,
- (b) a Division decision for the purposes of the *Child Protection (Working with Children) Act 2012*,
- (c) a Division decision for the purposes of the *National Disability Insurance Scheme (Worker Checks) Act 2018*,
- (d) a Division decision for the purposes of the lands legislation,
- (e) a determination of the Tribunal for the purposes of Part 7 of the *Native Title (New South Wales) Act 1994*,
- (f) an administrative review decision for the purposes of section 21 of the *Plant Diseases Act 1924*,
- (g) an administrative review decision for the purposes of section 51 of the *Victims Rights and Support Act 2013*.

### **16 Appeals against interim orders under *Anti-Discrimination Act 1977* with leave only**

Despite section 80(2) of this Act, an internal appeal against an interim order of the Tribunal under the *Anti-Discrimination Act 1977* may only be made with the leave of the Appeal Panel even if it is on a question of law.

### **17 Certain decisions to be appealed directly to Supreme Court**

(1) A party to proceedings in which any of the following decisions is made may appeal to the Supreme Court on a question of law against the decision—

- (a) a Division decision for the purposes of the *Child Protection (Working with Children)*

*Act 2012,*

- (b) a Division decision for the purposes of the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

**Note—**

Internal appeals against such decisions are not available because of clause 15. See also section 84 (Practice and procedure for appeals to courts under this Act).

- (2) The Supreme Court may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) the following—
- (a) an order affirming, varying or setting aside the decision under appeal,
  - (b) an order varying the decision under appeal,
  - (c) an order setting aside the decision under appeal and, if it considers appropriate, making a decision in substitution of that decision,
  - (d) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.
- (3) Subject to any interlocutory order made by the Supreme Court, an appeal to the Supreme Court does not affect the operation of the decision under appeal or prevent the taking of action to implement the decision.

**18 Decisions under lands legislation to be appealed directly to Land and Environment Court**

- (1) A party to proceedings in which a Division decision is made for the purposes of the lands legislation may appeal to the Land and Environment Court against the decision.

**Note—**

Internal appeals against these decisions are not available because of clause 15.

- (2) Subject to any interlocutory order made by the Land and Environment Court, an appeal to the Land and Environment Court does not affect the operation of the decision under appeal or prevent the taking of action to implement the decision.

**Schedule 4 Consumer and Commercial Division**

**Part 1 Interpretation**

**1 Definitions**

In this Schedule—

***Division decision*** means a decision of the Tribunal in exercise of a Division function.

**Division function** means a function of the Tribunal allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**substantive Division function** means a Division function other than—

- (a) a Division function exercised in connection with the making of an ancillary or interlocutory decision of the Tribunal, or
- (b) a Division function exercised by a registrar.

**the Division** means the Consumer and Commercial Division of the Tribunal.

## Part 2 Composition of Division

### 2 Division members

- (1) The Division is to be composed of the following members—
  - (a) the Division Head,
  - (b) such other members as may be assigned to the Division by or under this Act.
- (2) The Minister may not recommend the appointment of a person as the Division Head unless the Minister certifies that the Minister has consulted with the Minister for Innovation and Better Regulation about the appointment.

## Part 3 Functions of Division

### 3 Functions allocated to Division

- (1) The functions of the Tribunal in relation to the following legislation are allocated to the Division—

*Agricultural Tenancies Act 1990*

*Australian Consumer Law (NSW)*

*Boarding Houses Act 2012*

*Community Land Development Act 2021*

*Community Land Management Act 2021*

*Contracts Review Act 1980*

*Conveyancers Licensing Act 2003* (but only in relation to Division 3 of Part 4 of that Act)

*Credit (Commonwealth Powers) Act 2010*

*Dividing Fences Act 1991*

*Fair Trading Act 1987*

*Holiday Parks (Long-term Casual Occupation) Act 2002*

*Home Building Act 1989*

*Motor Dealers Act 1974*

*Motor Dealers and Repairers Act 2013*

*Motor Vehicle Repairs Act 1980*

*Pawnbrokers and Second-hand Dealers Act 1996*

*Property and Stock Agents Act 2002*

*Residential (Land Lease) Communities Act 2013*

*Residential Parks Act 1998*

*Residential Tenancies Act 2010*

*Retail Leases Act 1994*

*Retirement Villages Act 1999*

*Strata Schemes Management Act 2015*

*Sydney Water Act 1994*

*Uncollected Goods Act 1995*

(2) Subclause (1) extends to—

- (a) any functions conferred or imposed on the Tribunal by statutory rules made under legislation referred to in that subclause, and
- (b) any functions conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of proceedings for the exercise of functions allocated by that subclause (including the making of ancillary and interlocutory decisions of the Tribunal).

(3) However, the functions allocated to the Division do not include—

- (a) any functions of the Tribunal involving the exercise of its administrative review jurisdiction, or

(b) any functions of the Tribunal allocated to the Occupational Division of the Tribunal.

**Note—**

Functions that are not expressly allocated to this Division or another Division are allocated to the Administrative and Equal Opportunity Division. See clause 3(1) of Schedule 3.

## Part 4 Special constitution requirements

**Note—**

If special constitution requirements for the exercise of a Division function are not specified by the following provisions, the Tribunal may be constituted in accordance with the general provisions of section 27 of this Act. The Tribunal may also be constituted in accordance with the general provisions of that section in connection with the exercise of Division functions for the purposes of making ancillary or interlocutory decisions of the Tribunal.

### 4 Retail Leases Act 1994

- (1) The Tribunal, when exercising its substantive Division functions for the purposes of the *Retail Leases Act 1994*, is to be constituted by 1 Division member who is an Australian lawyer.
- (2) For this purpose, the Tribunal may (but need not) be assisted by 2 other members, in an advisory capacity only, consisting of—
  - (a) a member who has experience as a lessor, or working on behalf of lessors, under retail shop leases, and
  - (b) a member who has experience as a lessee, or working on behalf of lessees, under retail shop leases.
- (3) A member assisting the Tribunal under this clause is not to adjudicate on any matter before the Tribunal.
- (4) Terms used in this clause that are defined in the *Retail Leases Act 1994* have the same meanings as in that Act.

## Part 5 Special practice and procedure

### 5 Relationship between Tribunal and courts and other bodies in connection with Division functions

- (1) **Meaning of “court”** For the purposes of this clause, **court** means any court, tribunal, board or other body or person (other than one referred to in subclause (2)) that—
  - (a) is empowered under any other Act, or
  - (b) by consent of, or agreement between, 2 or more persons has authority, to decide or resolve any issue that is in dispute, whether through arbitration or conciliation or any other means.

- (2) However, **court** does not, for the purposes of this clause, include—
- (a) a court, tribunal, board or other body or person that, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or
  - (b) (Repealed)
  - (c) the Ombudsman, or
  - (d) any person exercising the functions of an ombudsman under any law of the Commonwealth, or
  - (e) any person authorised, under a law of the State or of the Commonwealth or of another State or a Territory, to make decisions or orders, or give directions, that are binding only on one party to a dispute.
- (3) **Effect of application to Tribunal or court** If, at the time when an application was made to the Tribunal for the exercise of a Division function, no issue arising under the application was the subject of a dispute in proceedings pending before a court, a court has no jurisdiction to hear or determine such an issue.
- (4) Subclause (3) ceases to apply to the extent to which the application concerned is dismissed for want of jurisdiction or withdrawn.
- (5) Subclause (3) does not prevent a court from hearing and determining any proceedings in which it is claimed that any order, determination or ruling of the Tribunal in exercise or purported exercise of a Division function is invalid for want of jurisdiction or from making any order as a consequence of that finding.
- (6) For the purposes of subclause (3), an issue arises under an application made to the Tribunal for the exercise of a Division function only if the existence of the issue is shown in the applicant's claim or is recorded in the record made by the Tribunal in accordance with this Act.
- (7) **Effect of pending court proceedings on Tribunal** If, at the time when an application is made to the Tribunal for the exercise of a Division function, an issue arising under the application was the subject of a dispute in proceedings pending before a court, the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue.
- (8) Subclause (7) ceases to apply to the extent to which the proceedings concerned are dismissed or quashed by the court, or by another court, for want of jurisdiction or without deciding the issue on its merits, or withdrawn.



- (9) **Evidence from court proceedings** In proceedings on an application to the Tribunal for the exercise of a Division function, a finding or decision made by a court, tribunal, board, body or person referred to in subclause (2) is admissible as evidence of the finding or decision.
- (10) **Clause prevails over other law** This clause has effect despite Part 3 of this Act or any other Act or law to the contrary.

## **6 Transfer of proceedings to courts or to other tribunals**

- (1) If the parties in any proceedings for the exercise of a Division function so agree, or if the Tribunal of its own motion or on the application of a party so directs, the proceedings are—
- (a) to be transferred to a court (in accordance with the rules of that court) that has jurisdiction in the matter, and
  - (b) to continue before that court as if the proceedings had been instituted there.
- (2) If the parties in any proceedings that have been instituted in a court so agree, or if the court of its own motion or on the application of a party so directs, the proceedings are, if the proceedings relate to a matter for which the Tribunal has jurisdiction to exercise a Division function—
- (a) to be transferred to the Tribunal in accordance with the procedural rules (if any), and
  - (b) to continue before the Tribunal as if the proceedings had been instituted in the Tribunal.

## **7 Rights of representation**

Despite section 45 of this Act—

- (a) a party to proceedings for the exercise of a Division function is entitled to be represented by an Australian legal practitioner without requiring the leave of the Tribunal if the party has been granted legal assistance under Division 2 of Part 2 of the [Fair Trading Act 1987](#), and
- (b) a party to proceedings for the exercise of a Division function for the purposes of the [Retail Leases Act 1994](#) is entitled to be represented by an Australian lawyer or other agent without requiring the leave of the Tribunal.

### **Note—**

The leave of the Tribunal will, however, be required under section 45 of this Act in other cases.

## **8 Renewal of proceedings in respect of certain Division decisions**

- (1) If the Tribunal makes an order in exercise of a Division function in proceedings, the

Tribunal may, when the order is made or later, give leave to the person in whose favour the order is made to renew the proceedings if the order is not complied with within the period specified by the Tribunal.

- (2) If an order has not been complied with within the period specified by the Tribunal, the person in whose favour the order was made may renew the proceedings to which the order relates by lodging a notice with the Tribunal, within 12 months after the end of the period, stating that the order has not been complied with.
- (3) The provisions of this Act apply to a notice lodged in accordance with subclause (2) as if the notice were a new application made in accordance with this Act.
- (4) When proceedings have been renewed in accordance with this clause, the Tribunal—
  - (a) may make any other appropriate order under this Act or enabling legislation as it could have made when the matter was originally determined, or
  - (b) may refuse to make such an order.
- (5) This clause does not apply if—
  - (a) the operation of an order has been suspended, or
  - (b) the order is or has been the subject of an internal appeal.

## **9 Assistance to Tribunal**

- (1) The Tribunal or principal registrar may, in relation to any proceedings for the exercise of a Division function, request a report or other assistance from the Commissioner for Fair Trading.
- (2) This clause does not limit the ability of the Tribunal to obtain reports or assistance from other persons or bodies.

## **10 Proceedings causing disadvantage**

- (1) The Tribunal may exercise the powers conferred by this clause if the Tribunal is of the opinion that a party in any proceedings for the exercise of a Division function is conducting the proceedings in such a way that unreasonably disadvantages another party in the proceedings by any conduct (including by failing to comply with an order or direction of the Tribunal).
- (2) The Tribunal may—
  - (a) if the party causing the disadvantage is the applicant—order that the proceedings (or part of the proceedings) be dismissed or struck out, or
  - (b) if the party causing the disadvantage is not the applicant—
    - (i) determine the proceedings (or part of the proceedings) in favour of the

applicant and make any appropriate orders, or

- (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).
- (3) Before making any order under subclause (2) against a party, the Tribunal is to have regard to the following—
- (a) the extent to which the party is familiar with the procedures of the Tribunal,
  - (b) the party's capacity to understand, and act on, a direction of the Tribunal,
  - (c) whether the party suffers from a disability,
  - (d) whether the party is acting deliberately in failing to comply with the Tribunal's directions.
- (4) The provisions of this clause are in addition to, and do not limit, the provisions of section 55 (Dismissal of proceedings) of this Act.

#### **11 (Repealed)**

### **Part 6 Appeals**

#### **12 Limitations on internal appeals against Division decisions**

- (1) An Appeal Panel may grant leave under section 80(2)(b) of this Act for an internal appeal against a Division decision only if the Appeal Panel is satisfied the appellant may have suffered a substantial miscarriage of justice because—
- (a) the decision of the Tribunal under appeal was not fair and equitable, or
  - (b) the decision of the Tribunal under appeal was against the weight of evidence, or
  - (c) significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

#### **Note—**

Under section 80 of this Act, a party to proceedings in which a Division decision that is an internally appealable decision is made may appeal against the decision on a question of law as of right. The leave of the Appeal Panel is required for an internal appeal on any other grounds.

- (2) Despite section 80(2)(b) of this Act, an internal appeal against a Division decision may only be made on a question of law (as of right) and not on any other grounds (even with leave) if—
- (a) the appellant is a corporation and the appeal relates to a dispute in respect of which the Tribunal at first instance had jurisdiction because of the operation of Schedule 3 to the *Credit (Commonwealth Powers) Act 2010*, or

- (b) the appeal is an appeal against an order of the Tribunal for the termination of a tenancy under the *Residential Tenancies Act 2010* and a warrant of possession has been executed in relation to that order.

## Schedule 5 Occupational Division

### Part 1 Interpretation

#### 1 Definitions

- (1) In this Schedule—

**Division decision** means a decision of the Tribunal in exercise of a Division function.

**Division function** means a function of the Tribunal allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**substantive Division function** means a Division function other than—

- (a) a Division function exercised in connection with the making of an ancillary or interlocutory decision of the Tribunal, or
- (b) a Division function exercised by a registrar.

**the Division** means the Occupational Division of the Tribunal.

- (2) Except as otherwise provided by this Schedule, a provision of this Schedule that provides for, or limits or excludes, an appeal against a decision of the Tribunal that is made for the purposes of specified legislation (or a specified provision of legislation) is taken to extend to any ancillary or interlocutory decision of the Tribunal in the proceedings in which that decision was made.

### Part 2 Composition of Division

#### 2 Division members

The Division is to be composed of the following members—

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

#### 3 Appointment of Division Head

The Minister may not recommend the appointment of a person as the Division Head unless the Minister certifies that the Minister has consulted with the Minister for Health

about the appointment.

## **Part 3 Functions of Division**

### **4 Functions allocated to Division**

(1) The functions of the Tribunal in relation to the following legislation are allocated to the Division—

*Aboriginal Land Rights Act 1983*

*Architects Act 2003*

*Building and Development Certifiers Act 2018*

*Conveyancers Licensing Act 2003* (except in relation to Division 3 of Part 4 of that Act)

*Design and Building Practitioners Act 2020*

*Health Care Complaints Act 1993*

*Health Practitioner Regulation National Law (NSW)*

*Legal Profession Uniform Law (NSW)*

*Legal Profession Uniform Law Application Act 2014*

*Local Government Act 1993*

*Passenger Transport Act 1990*

*Point to Point Transport (Taxis and Hire Vehicles) Act 2016*

*Public Notaries Act 1997*

*Security Industry Act 1997*

*Surveying and Spatial Information Act 2002*

*Tattoo Industry Act 2012*

*Tow Truck Industry Act 1998*

*Veterinary Practice Act 2003*

*Wool, Hide and Skin Dealers Act 2004*

#### **Note—**

The functions allocated by this subclause include the function of exercising the administrative review jurisdiction of the Tribunal in relation to the specified legislation.

- (2) Without limiting subclause (1), the function of exercising the administrative review jurisdiction of the Tribunal in relation to the following legislation is also allocated to the Division—

*Fair Trading Act 1987*

*Home Building Act 1989*

*Motor Dealers Act 1974*

*Motor Dealers and Repairers Act 2013*

*Motor Vehicle Repairs Act 1980*

*Pawnbrokers and Second-hand Dealers Act 1996*

*Property and Stock Agents Act 2002*

*State Insurance and Care Governance Act 2015*

*Workplace Injury Management and Workers Compensation Act 1998*

- (3) The functions allocated to the Division by subclauses (1) and (2) include—
- (a) any functions under the provisions of the *Licensing and Registration (Uniform Procedures) Act 2002* that confer administrative review jurisdiction on the Tribunal to the extent that those provisions are applied by legislation referred to in those subclauses to decisions made under that legislation, and
  - (b) any functions conferred or imposed on the Tribunal by statutory rules made under legislation referred to in those subclauses, and
  - (c) any functions conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of proceedings for the exercise of functions allocated by those subclauses (including the making of ancillary and interlocutory decisions of the Tribunal), and
  - (d) in relation to the exercise of administrative review jurisdiction in this Division—any functions conferred or imposed on the Tribunal by or under the *Administrative Decisions Review Act 1997* in connection with the exercise of such jurisdiction.

## **Part 4 Special provisions relating to occupations**

### **Note—**

If special constitution requirements for the exercise of a Division function are not specified by the following provisions, the Tribunal may be constituted in accordance with the general provisions of section 27 of this Act. The Tribunal may also be constituted in accordance with the general provisions of that section in connection with the exercise of Division functions for the purposes of making ancillary or interlocutory decisions of the Tribunal.

## Division 1 Architects

### 5 Division functions under [Architects Act 2003](#)

- (1) The Tribunal, when exercising its substantive Division functions for the purposes of the [Architects Act 2003](#), is to be constituted by 3 Division members as follows—
  - (a) 1 member who is an Australian lawyer,
  - (b) 1 member who is an architect but not an Australian lawyer,
  - (c) 1 general member who is neither an architect nor an Australian lawyer.
- (2) In this clause—

**architect** has the same meaning as in the [Architects Act 2003](#).

## Division 2 Councillors and designated persons

### 6 Constitution of Tribunal for [Aboriginal Land Rights Act 1983](#) and [Local Government Act 1993](#)

- (1) Except as provided by subclause (2), the Tribunal, when exercising its substantive Division functions for the purposes of the [Aboriginal Land Rights Act 1983](#) or [Local Government Act 1993](#), is to be constituted by one Division member who is an Australian lawyer of at least 7 years' standing.
- (2) The Tribunal, when exercising its substantive Division functions for the purposes of section 329 of the [Local Government Act 1993](#), is to be constituted by 3 Division members.
- (3) However, a Division member is not qualified to participate in proceedings for the exercise of substantive Division functions for the purposes of the [Aboriginal Land Rights Act 1983](#) or [Local Government Act 1993](#) if—
  - (a) in the case of the exercise of functions for the purposes of the [Aboriginal Land Rights Act 1983](#)—the member has, within 12 months before participation, been an officer or a member of staff of an Aboriginal Land Council or a councillor (within the meaning of that Act), or
  - (b) in the case of the exercise of functions for the purposes of the [Local Government Act 1993](#)—the member has, within 12 months before participation, been a councillor or employee of a council (within the meaning of that Act).

### 7 Privilege concerning answers and documents

- (1) This clause applies to proceedings for the exercise of Division functions for the purposes of the [Aboriginal Land Rights Act 1983](#) or [Local Government Act 1993](#) despite section 46 of this Act.

- (2) A witness summoned to attend or appearing before the Tribunal at a hearing for proceedings to which this clause applies is not excused from answering any question or producing any document or other thing—
- (a) on the ground that the answer or production may incriminate the witness, or
  - (b) on any other ground of privilege, or
  - (c) on the ground of a duty of secrecy or other restriction on disclosure, or
  - (d) on any other ground.
- (3) An answer made, or document or other thing produced, by a witness at a hearing before the Tribunal is not (except as otherwise provided by this clause) admissible in evidence against the witness in any civil or criminal proceedings or in any disciplinary proceedings.
- (4) Nothing in this clause makes inadmissible—
- (a) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subclause (1), or
  - (b) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.
- (5) If—
- (a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Tribunal, and
  - (b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between the practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Tribunal,
- the Australian legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

## Division 3 Health practitioners

### 8 Definitions

In this Division—

**health practitioner** has the same meaning as in the National Law, and includes a student within the meaning of that Law.



**Health Practitioner List**—see clause 10.

**National Law** means the *Health Practitioner Regulation National Law (NSW)*.

**9 Certain objectives and principles under National Law to be applied**

- (1) The Tribunal, when exercising its Division functions for the purposes of the National Law, is under a duty to observe the objectives and principles referred to in sections 3 and 3A of the National Law.
- (2) The provisions of this clause are in addition to, and do not limit, the provisions of section 36(5) of this Act.

**10 Establishment of Health Practitioner List**

- (1) There is to be a Division List for the Division called the Health Practitioner List.
- (2) Except as provided by subclause (3), all proceedings involving the exercise of a Division function in relation to the National Law are to be entered and managed in the Health Practitioner List.
- (3) Proceedings involving the exercise of the administrative review jurisdiction of the Tribunal are not to be entered and managed in the Health Practitioner List.

**Note—**

See clause 13 of Schedule 5F to the National Law.

**11 List Manager of Health Practitioner List**

- (1) A Division member is to be designated as the List Manager for the Health Practitioner List, but only on the recommendation of the Minister for Health.
- (2) A Division member is qualified to be designated as the List Manager for the Health Practitioner List only if the member is an Australian lawyer of at least 7 years' standing.
- (3) The functions of the List Manager for the Health Practitioner List are—
  - (a) to manage the proceedings that are entered in the List, and
  - (b) to give directions concerning the constitution of the Tribunal for proceedings entered in the List (subject to any direction of the President or Division Head of the Division) as if the function of constituting the Tribunal for such proceedings had been delegated by the President to the List Manager under clause 12 of Schedule 2, and
  - (c) to exercise such other functions as are conferred or imposed on the List Manager by or under this Act or the National Law.
- (4) The List Manager for the Health Practitioner List may delegate any of the List

Manager's functions (other than this power of delegation, but including functions relating to the management of proceedings involving any particular class of health practitioner) to another Division member who is an Australian lawyer of at least 7 years' standing.

## **12 Appointment and assignment of Division members where required under National Law**

The President must—

- (a) appoint a person as an occasional member for particular proceedings entered in the Health Practitioner List if that person has been selected for participation in the proceedings in accordance with any applicable procedures specified by or under the National Law, and
- (b) assign a term member to the Division to participate in a particular class of proceedings entered in the Health Practitioner List if the person has been selected for participation in that class of proceedings in accordance with any applicable procedures specified by or under the National Law.

## **13 Constitution of Tribunal for proceedings entered in Health Practitioner List**

- (1) The Tribunal, when exercising a Division function in proceedings that are entered in the Health Practitioner List, is to be constituted (and, where necessary, reconstituted) in accordance with any applicable requirements specified by or under the National Law for the constitution of the Tribunal in proceedings of the kind concerned.
- (2) Nothing in subclause (1) limits the exercise by the List Manager for the Health Practitioner List (or a delegate of the List Manager) of any of the functions of the List Manager.

### **Note—**

The National Law also makes special provision with respect to certain practice and procedure for proceedings entered in the Health Practitioner List.

## **14 Effect of amendments to Schedule by regulations**

- (1) This clause applies to any amendment (a **relevant amendment**) made to any of the other provisions of this Schedule by regulations made for the purposes of section 17(4) of this Act.
- (2) A relevant amendment is taken not to apply in relation to—
  - (a) proceedings entered in the Health Practitioner List, or
  - (b) the exercise of Division functions in relation to such proceedings, or
  - (c) appeals against Division decisions made in such proceedings.
- (3) The provisions of this Schedule continue to apply in relation to such proceedings,

functions and appeals as if the relevant amendment had not been made.

- (4) Nothing in this clause affects that application of amendments made to this Schedule by an Act.

## Division 4 Lawyers and public notaries

### 15 Definitions

In this Division—

**Bar Association** means the New South Wales Bar Association.

**barrister** has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

**Commissioner** means the Legal Services Commissioner appointed under Division 2 of Part 3 of the [Legal Profession Uniform Law Application Act 2014](#).

**complaint** means a complaint under Chapter 5 of the [Legal Profession Uniform Law \(NSW\)](#).

**Council** means the Council of the Bar Association or the Council of the Law Society.

**Law Society** means the Law Society of New South Wales.

**respondent lawyer** means the lawyer (within the meaning it has when used alone in Chapter 5 of the [Legal Profession Uniform Law \(NSW\)](#)) who is the subject of a complaint.

**senior judicial officer** means any of the following—

- (a) a Judge of the Supreme Court,
- (b) a Judge of the District Court,
- (c) a judicial officer of any other court or tribunal having an equivalent status (for the purposes of Part 9 of the [Constitution Act 1902](#)) to the Supreme Court or District Court.

**solicitor** has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

### 16 Designation of List Manager for Division List

The President may not designate a Division member to be the List Manager of a Division List for the Division to which proceedings for the purposes of the [Legal Profession Uniform Law \(NSW\)](#) or [Public Notaries Act 1997](#) are to be entered unless the President has consulted with both the Bar Association and Law Society about the designation.

### 17 Qualifications of Division member to participate in proceedings

- (1) This clause sets out the qualifications that Division members must have to participate

in the exercise of Division functions for the purposes of the *Legal Profession Uniform Law (NSW)* and *Public Notaries Act 1997*.

- (2) A Division member has a **judicial qualification** for the purposes of this Division if—
  - (a) the member is a Deputy President who has been designated by the President as having that qualification, or
  - (b) the member is a current or former senior judicial officer.
- (3) A Division member has a **professional qualification** for the purposes of this Division if the member is a barrister or solicitor who has been designated by the President as having that qualification.
- (4) The President may, by written instrument, designate a Division member as having a judicial qualification or professional qualification only if—
  - (a) in the case of a designation of a Deputy President as having a judicial qualification—the President has consulted with both the Bar Association and Law Society about the designation, or
  - (b) in the case of a designation of a Division member as having a professional qualification—the President has consulted with the Bar Association (in the case of a barrister) or the Law Society (in the case of a solicitor) about the designation.
- (5) The President may revoke a designation only if the President has consulted with the same body or bodies with which the President was required to consult in making the designation.

## **18 Division functions under legal profession legislation**

- (1) The Tribunal, when conducting proceedings initiated under the *Legal Profession Uniform Law (NSW)*, section 300 in relation to a complaint, must be constituted with Division members in accordance with whichever of the following constitutions the President determines as being appropriate for the particular case—
  - (a) in the case of a complaint against a barrister—
    - (i) one member with a judicial qualification, one member with a professional qualification who is a barrister and one general member, or
    - (ii) 2 members with a professional qualification who are barristers and one general member,
  - (b) in the case of a complaint against a solicitor—
    - (i) one member with a judicial qualification, one member with a professional qualification who is a solicitor and one general member, or

- (ii) 2 members with a professional qualification who are solicitors and one general member,
  - (c) in the case of a complaint against a respondent lawyer who is neither a barrister nor a solicitor—any constitution specified in paragraph (a) or (b).
- (2) The Tribunal, when exercising other Division functions for the purposes of the *Legal Profession Uniform Law Application Act 2014* or the *Legal Profession Uniform Law (NSW)*, including making ancillary or interlocutory decisions of the Tribunal, must be constituted by 1 or more Division members, at least 1 of whom has a judicial qualification or a professional qualification.

### **19 Division functions under *Public Notaries Act 1997***

The Tribunal, when exercising its substantive Division functions for the purposes of the application of Chapter 5 of the *Legal Profession Uniform Law (NSW)* under section 14 of the *Public Notaries Act 1997*, is to be constituted by Division members as follows—

- (a) in the case of a complaint against a public notary who is a barrister—
  - (i) one member who is an Australian lawyer of at least 7 years' standing, and
  - (ii) one member with a professional qualification who is a barrister, and
  - (iii) one general member,
- (b) in the case of a complaint against a public notary who is a solicitor—
  - (i) one member who is an Australian lawyer of at least 7 years' standing, and
  - (ii) one member with a professional qualification who is a solicitor, and
  - (iii) one general member.

### **20 Rules of evidence**

Despite section 38 of this Act, the Tribunal is to observe the rules of evidence in proceedings in exercise of a Division function for the purposes of the *Legal Profession Uniform Law (NSW)* or *Public Notaries Act 1997* concerning a question of professional misconduct.

### **21 Parties**

- (1) The following persons are entitled to appear at a hearing conducted by the Tribunal for the exercise of a Division function for the purposes of the *Legal Profession Uniform Law (NSW)*—
  - (a) in the case of an application for an administrative review of a decision made in relation to an Australian practising certificate or an Australian registration certificate—the applicant,

- (b) in the case of a complaint—the respondent lawyer,
  - (c) in the case of a complaint against a barrister—the Council of the Bar Association,
  - (d) in the case of a complaint against a solicitor—the Council of the Law Society,
  - (e) in the case of a complaint where the respondent lawyer is neither a barrister nor a solicitor—either or both of the Councils,
  - (f) the Commissioner,
  - (g) the Attorney General.
- (2) The complainant for a complaint is entitled to appear at the hearing in respect of the following aspects—
- (a) those aspects of the hearing that relate to a request by the complainant for a compensation order,
  - (b) without limiting paragraph (a), those aspects of the hearing that relate to a review of a decision to make an order under section 299 (Determination by local regulatory authority—unsatisfactory professional conduct) of the *Legal Profession Uniform Law (NSW)*,
  - (c) other aspects of the hearing, but only if the Tribunal grants leave to the complainant to appear in respect of them.
- (3) The Tribunal may grant leave to any other person to appear at the hearing if satisfied that it is appropriate for that person to appear at the hearing.
- (4) Despite section 45 of this Act (and without limiting clause 27), a person who is entitled to appear at the hearing, or who is granted leave to appear at the hearing, may—
- (a) appear personally, or
  - (b) be represented by an Australian legal practitioner without requiring the leave of the Tribunal, or
  - (c) be represented by any other person with the leave of the Tribunal granted under section 45 of this Act.
- (5) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the proceedings concerned.
- (6) (Repealed)

## **22 Hearings into conduct to be conducted in public**

- (1) All hearings conducted by the Tribunal into allegations of unsatisfactory professional

conduct or professional misconduct for the purposes of the *Legal Profession Uniform Law (NSW)* are to be open to the public, unless the Tribunal decides to make an order under section 49 of this Act.

- (2) In deciding whether to make an order under section 49 or 64 of this Act (and without affecting the generality of either section), the Tribunal is to have regard to the desirability of protecting from disclosure any material that is the subject of client legal privilege or any duty of confidentiality.
- (3) Without limiting the generality of section 64 of this Act—
  - (a) the Tribunal may, at any stage of the proceedings for the purposes of Part 11 of the *Legal Profession Uniform Law Application Act 2014*, make orders regarding non-disclosure of information obtained under or for the purposes of that Part from or about a client of an Australian legal practitioner where the information is the subject of client legal privilege or any duty of confidentiality, and
  - (b) the orders may apply to persons generally or to specified persons.
- (4) This clause has effect whether or not the client has waived the client legal privilege or the benefit of the duty of confidentiality, and whether or not the information was obtained before or after the proceedings were commenced.

### **23 Costs consequent of adverse conduct findings**

- (1) Despite section 60 of this Act, the Tribunal must make orders requiring a respondent lawyer whom it has found to have engaged in unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Commissioner, a Council and the complainant), unless the Tribunal is satisfied that exceptional circumstances exist.
- (2) The Tribunal may make orders requiring a respondent lawyer whom it has not found to have engaged in unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Commissioner, a Council and the complainant), if satisfied that—
  - (a) the sole or principal reason why the proceedings were commenced in the Tribunal was a failure of the lawyer to co-operate with the Commissioner or a Council, or
  - (b) the lawyer has contravened an order of the Tribunal made in the course of the proceedings concerned, or
  - (c) there is some other reason warranting the making of an order in the particular circumstances.
- (3) The Tribunal may make orders requiring payment of a respondent lawyer's costs from the Public Purpose Fund (within the meaning of the *Legal Profession Uniform Law Application Act 2014*), but may do so only if satisfied that the lawyer did not engage in

unsatisfactory professional conduct or professional misconduct and the Tribunal considers that special circumstances warrant the making of the orders. The Tribunal is to have regard to the length and complexity of the proceedings when making a determination under this subclause.

- (4) The Tribunal may make orders requiring a respondent lawyer in respect of whom proceedings are pending before the Tribunal to pay costs on an interlocutory or interim basis.
- (5) The Tribunal may make orders requiring a person to pay costs (including, as appropriate, the costs of the Commissioner, a Council, the complainant and the respondent lawyer against whom the complaint was made), if satisfied that—
  - (a) the person, whether before or during the proceedings, failed to produce or delayed in producing any document required or requested to be produced, and
  - (b) the failure or delay contributed to delay in commencing, conducting or concluding the proceedings in such a way as to warrant the making of the orders.
- (6) The Tribunal may fix the amount of costs itself or order that the amount of costs be assessed by a costs assessor under the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*).
- (7) An order for costs may specify the terms on which costs must be paid.

## **Division 5 Security activities**

### **24 Security Industry Act 1997**

The Tribunal, when exercising its substantive Division functions for the purposes of section 29 of the *Security Industry Act 1997*, is to be constituted by 1 Division member who is an Australian lawyer.

## **Division 6 Veterinary practitioners**

### **25 Division functions under Veterinary Practice Act 2003**

- (1) The Tribunal, when exercising its substantive Division functions for the purposes of the *Veterinary Practice Act 2003*, is to be constituted by 3 Division members as follows—
  - (a) 1 member who is an Australian lawyer,
  - (b) 1 member who is a veterinary practitioner but not an Australian lawyer,
  - (c) 1 general member who is neither a veterinary practitioner nor an Australian lawyer.
- (2) In this clause—



**veterinary practitioner** has the same meaning as in the *Veterinary Practice Act 2003*.

## **26 Costs in veterinary practitioner proceedings**

- (1) Despite section 60 of this Act, the Tribunal must order costs against a veterinary practitioner in proceedings for the purposes of the *Veterinary Practice Act 2003* in any of the following circumstances unless the Tribunal is satisfied that exceptional circumstances exist—
  - (a) if the Tribunal affirms a disciplinary finding against a practitioner in proceedings for the purposes of section 48 of the *Veterinary Practice Act 2003*,
  - (b) if the Tribunal considers that the matter of the complaint against a veterinary practitioner has been proved, or has not been proved to the satisfaction of the Tribunal, but the Tribunal nevertheless considers that the conduct of the veterinary practitioner was sufficiently unacceptable to warrant the making of the complaint.
- (2) This clause does not limit the power of the Tribunal to order costs in proceedings for a Division decision for the purposes of that Act in other circumstances.

## **Part 5 Special practice and procedure for Division generally**

### **27 Legal representation**

Despite section 45 of this Act, a party to proceedings for the exercise of a Division function is entitled to be represented by an Australian legal practitioner without requiring the leave of the Tribunal.

**Note—**

The leave of the Tribunal will, however, be required under section 45 of this Act in other cases.

### **28 Statement of reasons of Tribunal need not contain confidential information concerning certain professionals**

- (1) The Tribunal is not required to include confidential information in any statement of reasons it gives under this Act for any of the following Division decisions—
  - (a) a decision for the purposes of the *Architects Act 2003* concerning an architect or former architect,
  - (b) a decision for the purposes of the *Building and Development Certifiers Act 2018* concerning a registered certifier or an accreditation authority or a former registered certifier or former accreditation authority,
  - (c) a decision for the purposes of the *Health Practitioner Regulation National Law (NSW)* concerning a health practitioner or former health practitioner,
  - (d) a decision for the purposes of the *Legal Profession Uniform Law (NSW)* concerning

- a lawyer (within the meaning it has when used alone in Chapter 5 of that Law),
- (e) a decision for the purposes of the *Veterinary Practice Act 2003* concerning a veterinary practitioner or former veterinary practitioner,
  - (f) a decision for the purposes of the *Design and Building Practitioners Act 2020* concerning a registered practitioner or former registered practitioner.
- (2) If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
  - (3) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of this clause, the Tribunal must give a confidential information notice to the person.
  - (4) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
  - (5) This clause does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
  - (6) In this clause—  
**confidential information** means information that—
    - (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
    - (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for this clause, be required) to provide a written statement of a decision, and
    - (c) is information—
      - (i) that was supplied in confidence, or
      - (ii) the publication of which would reveal a trade secret, or
      - (iii) that was provided in compliance with a duty imposed by any legislation, or
      - (iv) the provision of which by the Tribunal would be in breach of any legislation.

## Part 6 Appeals

### 29 Certain profession decisions to be appealed directly to Supreme Court or Land and

## Environment Court

- (1) **Profession decisions not internally appealable** Despite section 32 of this Act, each of the following Division decisions (a **profession decision**) is not an internally appealable decision for the purposes of an internal appeal—
- (a) a decision for the purposes of the [Aboriginal Land Rights Act 1983](#) other than—
    - (i) a decision for the purposes of section 204 of that Act not to conduct proceedings into a complaint, or
    - (ii) a decision for the purposes of section 205 of that Act to determine proceedings into a complaint without a hearing,
  - (b) a decision for the purposes of the [Architects Act 2003](#),
  - (c) a decision for the purposes of the [Building and Development Certifiers Act 2018](#),
  - (d) a decision for the purposes of the [Health Practitioner Regulation National Law \(NSW\)](#) (other than a decision for the purposes of clause 13 of Schedule 5F to that Law),
  - (e) a decision for the purposes of the [Legal Profession Uniform Law \(NSW\)](#),
  - (f) a decision for the purposes of the [Local Government Act 1993](#) other than—
    - (i) a decision for the purposes of section 469 of that Act not to conduct proceedings into a complaint, or
    - (ii) a decision for the purposes of section 470 of that Act to determine proceedings into a complaint without a hearing,
  - (g) a decision for the purposes of the [Surveying and Spatial Information Act 2002](#),
  - (h) a decision for the purposes of the [Veterinary Practice Act 2003](#),
  - (i) a decision for the purposes of the [Design and Building Practitioners Act 2020](#).

### Note—

A Division decision other than a profession decision that is a general decision or administrative review decision may be subject to an internal appeal. See section 32 and Division 2 of Part 6 of the Act.

- (2) **Right to appeal to Supreme Court or Land and Environment Court** However, a party to proceedings in which a profession decision is made may appeal against the decision in accordance with this clause to—
- (a) in the case of an order for the purposes of Division 3 of Part 5 or Division 4 of Part 7 of the [Aboriginal Land Rights Act 1983](#) declaring a vacancy in an office—the Land and Environment Court, and

- (b) in the case of any other decision—the Supreme Court.
- (3) Despite subclause (2), an appeal does not lie with respect to any of the following Division decisions—
  - (a) a decision made for the purposes of section 89(2) of the *Legal Profession Uniform Law Application Act 2014*,
  - (b) any other decision of a kind prescribed by the regulations made for the purposes of that Act.
- (4) **Basis or grounds for appeal** An appeal to a court under this clause—
  - (a) in the case of an appeal against a decision for the purposes of the *Legal Profession Uniform Law (NSW)*—is an appeal to which section 75A of the *Supreme Court Act 1970* applies and, accordingly, is by way of a rehearing rather than a new (de novo) hearing, and
  - (b) in the case of any other appeal (a **non-lawyer appeal**)—may be made as of right on any question of law, or with the leave of the court, on any other grounds.

**Note—**

See also section 84 (Practice and procedure for appeals to courts under this Act).

- (5) Subclause (4)(a) does not affect the provisions of section 75A of the *Supreme Court Act 1970* relating to the receipt of evidence by the Supreme Court.
- (6) **Leave required in certain cases** Despite subclauses (2)–(5), an appeal does not lie to a court under this clause against any of the following decisions except by leave of the court—
  - (a) an interlocutory decision of the Tribunal,
  - (b) a decision made with the consent of the parties,
  - (c) a decision as to costs.
- (7) **Non-lawyer appeals** The court in a non-lawyer appeal may—
  - (a) decide to deal with the appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and
  - (b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance, to be given in the new hearing as it considers appropriate in the circumstances.
- (8) In determining a non-lawyer appeal, the court may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following—

- (a) the decision under appeal to be confirmed, affirmed or varied,
- (b) the decision under appeal to be quashed or set aside,
- (c) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,
- (d) the whole or any part of the case to be reconsidered by the Tribunal at first instance, either with or without further evidence, in accordance with the directions of the court.

(9) **Effect of appeal on profession decision** Subject to any interlocutory order made by the court concerned, an appeal under this clause does not affect the operation of the Division decision under appeal or prevent the taking of action to implement the decision.

## Schedule 6 Guardianship Division

### Part 1 Interpretation

#### 1 Definitions

(1) In this Schedule—

**Division decision** means a decision of the Tribunal in exercise of a Division function.

**Division function** means a function of the Tribunal allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**substantive Division function** means a Division function other than—

- (a) a Division function exercised in connection with the making of an ancillary or interlocutory decision of the Tribunal, or
- (b) a Division function exercised by a registrar.

**the Division** means the Guardianship Division of the Tribunal.

(2) For the purposes of this Schedule—

- (a) a Division member has a **professional qualification** if the member is a person (such as a medical practitioner, psychologist or social worker) who has experience in assessing or treating persons to whom the [Guardianship Act 1987](#) relates, or
- (b) a Division member has a **community based qualification** if the member is a person who has experience with persons to whom the [Guardianship Act 1987](#)

relates.

- (3) A Division member is taken to have a professional qualification or community based qualification for the purposes of the Schedule if the President has, by written instrument, designated the member as having that qualification.

## **Part 2 Composition of Division**

### **2 Division members**

The Division is to be composed of the following members—

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

## **Part 3 Functions of Division**

### **3 Functions allocated to Division**

- (1) The functions of the Tribunal in relation to the following legislation are allocated to the Division—

*Children and Young Persons (Care and Protection) Act 1998*

*Guardianship Act 1987*

*NSW Trustee and Guardian Act 2009*

*Powers of Attorney Act 2003*

- (2) The functions allocated to the Division by subclause (1) include—
- (a) any functions conferred or imposed on the Tribunal by statutory rules made under legislation referred to in that subclause, and
  - (b) any functions conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of proceedings for the exercise of functions allocated by that subclause (including the making of ancillary and interlocutory decisions of the Tribunal).
- (3) However, the functions allocated to the Division do not include any functions of the Tribunal involving the exercise of its administrative review jurisdiction.

**Note—**

Functions that are not expressly allocated to this Division or another Division are allocated to the Administrative and Equal Opportunity Division. See clause 3(1) of Schedule 3.

## **Part 4 Special constitution requirements for exercise of substantive**

## Division functions

### Note—

If special constitution requirements for the exercise of a Division function are not specified by the following provisions, the Tribunal may be constituted in accordance with the general provisions of section 27 of this Act. The Tribunal may also be constituted in accordance with the general provisions of that section in connection with the exercise of Division functions for the purposes of making ancillary or interlocutory decisions of the Tribunal.

### 4 Constitution of Tribunal

- (1) The Tribunal, when exercising its substantive Division functions, is to be constituted by 3 Division members as follows—
  - (a) 1 member who is an Australian lawyer,
  - (b) 1 member with a professional qualification,
  - (c) 1 member with a community based qualification.
- (2) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members in exercising its substantive Division functions for the purposes of the following provisions of the *Guardianship Act 1987*—
  - (a) Division 4 (Assessment and review of guardianship orders) of Part 3,
  - (b) Division 2 (Review and revocation of financial management orders) of Part 3A,
  - (c) Division 3 (Review of appointment of manager) of Part 3A,
  - (d) section 36 (Who may give consent) in respect of giving consent to the carrying out of minor treatment or major treatment (but not special treatment or treatment in the course of a clinical trial),
  - (e) Part 5A (Reciprocal arrangements).
- (2A) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members when exercising its substantive Division functions for the purposes of determining an application under the *Guardianship Act 1987*, section 46A if—
  - (a) the application is made during the exercise of substantive Division functions for the purposes of a provision referred to in subclause (2)(a)-(c) in relation to the person who is the subject of the application, or
  - (b) the application is urgent.
- (2B) For subclause (2A), an application is **urgent** if the Tribunal considers a delay caused by the operation of subclause (1) would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application.
- (2C) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members in

exercising its substantive Division functions for the purposes of clause 10.

- (3) When the Tribunal is constituted by 2 members, each member must—
  - (a) be an Australian lawyer or have a qualification referred to in subclause (1)(b) or (c), and
  - (b) not have the same qualification (including that of an Australian lawyer) as the other member.
- (4) In this clause, **clinical trial**, **major treatment**, **minor treatment** and **special treatment** have the same meanings as in Part 5 of the [Guardianship Act 1987](#).

## Part 5 Special practice and procedure

### 5 Certain principles under [Guardianship Act 1987](#) to be applied

- (1) The Tribunal, when exercising its Division functions in relation to persons who have disabilities, is under a duty to observe the principles referred to in the [Guardianship Act 1987](#), section 4.

**Note—**

Section 4 of the [Guardianship Act 1987](#) sets out principles that everyone must observe when exercising functions under that Act with respect to persons with disabilities.

- (2) The provisions of this clause are in addition to, and do not limit, the provisions of section 36(5) of this Act.

### 6 Hearing required except for making of ancillary or interlocutory decisions

- (1) Despite section 50 of this Act, the Tribunal is required to hold a hearing in proceedings that involve the exercise of a substantive Division function.
- (2) However, the Tribunal may dispense with a hearing for the purposes of making an ancillary or interlocutory decision of the Tribunal.

#### 6A Tribunal may dispense with notice of hearing

The Tribunal may dispense with a requirement to serve notice of a hearing under the [Guardianship Act 1987](#), section 10 or 25I if the Tribunal considers compliance with the requirement would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application to which the hearing relates.

### 7 Tribunal may join parties

- (1) The Tribunal may make an order under section 44(1) of this Act joining a person as a party to proceedings for the exercise of a Division function if, in the opinion of the Tribunal, the person should be a party to the proceedings (whether because of the person's concern for the welfare of the person the subject of the proceedings or for



any other reason).

- (2) If the Tribunal joins a person as a party to any such proceedings, the Tribunal must, as soon as practicable, notify the applicant (if any) for the proceedings accordingly.
- (3) This clause does not limit section 35 (Who are interested persons and parties in relation to applications) of the *Powers of Attorney Act 2003* in its application to the Tribunal.

## **8 Certain guardianship functions may be exercised by registrar**

- (1) Despite clause 4, a registrar may, at the direction of the President, exercise any Division function of the Tribunal in respect of—
  - (a) refusing under section 25A of the *Guardianship Act 1987* a request to review a guardianship order, or
  - (b) refusing under section 25O of the *Guardianship Act 1987* a request to review a financial management order on an application under section 25R, or
  - (c) refusing under section 25T of the *Guardianship Act 1987* a request to review the Tribunal's appointment of the manager of a protected person's estate, or
  - (d) recognising under section 48B of the *Guardianship Act 1987* a person's status as the guardian of another person or as the manager of the estate of another person.
- (2) The President may direct a registrar to refer the exercise of such a function in a particular matter to the Tribunal. The registrar must comply with such a direction.
- (3) A registrar may refer a particular matter to the Tribunal if the registrar considers it would be more appropriate for the Tribunal to deal with the matter.
- (4) A decision of a registrar under subclause (1) is declared to be an appealable decision for the purposes of section 32 of this Act.

### **Note—**

A decision of a registrar under subclause (1) is an internally appealable decision for the purposes of this Act.

## **9 Legal representation**

Despite section 45 of this Act, a party to proceedings for the exercise of a Division function for the purposes of section 175 of the *Children and Young Persons (Care and Protection) Act 1998* is entitled to be represented by an Australian legal practitioner without requiring the leave of the Tribunal.

### **Note—**

The leave of the Tribunal will, however, be required under section 45 of this Act in other cases.

## 10 Withdrawal of applications

An application to the Tribunal for the exercise of a substantive Division function cannot be withdrawn except with the consent of the Tribunal.

## 11 Written reasons are generally to be provided

- (1) Subject to subclause (2), the Tribunal (however constituted) must give each party to proceedings for the exercise of a Division function a written statement of reasons for any decision it makes in the proceedings.
- (2) The Tribunal is not required to provide a written statement of reasons for any of the following kinds of decisions unless requested to do so by a party under section 62 of this Act—
  - (a) a decision for the purposes of section 36 (Who may give consent) of the *Guardianship Act 1987* in respect of giving consent to the carrying out of minor treatment,
  - (b) a decision for the purposes of Part 5A (Reciprocal arrangements) of the *Guardianship Act 1987*,
  - (c) an ancillary or interlocutory decision of the Tribunal made in the proceedings.
- (3) A statement of reasons for the purposes of this clause must set out the matters referred to in section 62(3) of this Act.
- (4) A requirement under this clause to provide a statement of reasons applies even if the Tribunal has not been (or cannot be) requested under section 62 of this Act to provide a statement of reasons.

## Part 6 Appeals

### 12 Division decisions may be appealed to either Appeal Panel or Supreme Court

- (1) A party to proceedings in which a Division decision that is an internally appealable decision is made (an **appealable Division decision**) may appeal against the decision by either—
  - (a) an internal appeal to an Appeal Panel in accordance with Division 2 of Part 6 of this Act, or
  - (b) an appeal to the Supreme Court in accordance with this Part.
- (2) However, a decision of a registrar made under clause 8(1) may only be appealed as an internal appeal to an Appeal Panel in accordance with Division 2 of Part 6 of this Act.
- (3) An internal appeal precludes an appeal to the Supreme Court against the same

decision unless the internal appeal is withdrawn with the approval of an Appeal Panel for the purpose of enabling an appeal to the Supreme Court against the decision.

- (4) An appeal to the Supreme Court precludes an internal appeal against the same decision unless the appeal to the Supreme Court is withdrawn with the approval of the Court for the purpose of enabling an internal appeal against the decision.

### **13 Constitution of Appeal Panel for internal appeals**

- (1) Except as provided by subclause (2), an Appeal Panel determining an internal appeal against an appealable Division decision is to be constituted by 3 members (whether or not Division members) as follows—
  - (a) 1 member who is an Australian lawyer of at least 7 years' standing,
  - (b) 1 other member who is an Australian lawyer,
  - (c) 1 senior or general member who is not an Australian lawyer.
- (2) An Appeal Panel may be constituted by 1 member when making an ancillary or interlocutory decision of the Tribunal in an internal appeal against an appealable Division decision.
- (3) Nothing in subclause (2) prevents an Appeal Panel from being constituted as provided by subclause (1) when making an ancillary or interlocutory decision of the Tribunal in an internal appeal against an appealable Division decision.

### **14 Appeals to Supreme Court under this Part**

- (1) A party to proceedings in which an appealable Division decision is made may appeal to the Supreme Court against the decision—
  - (a) in the case of an interlocutory decision of the Tribunal—with the leave of the Court, or
  - (b) in the case of any other kind of decision—as of right on any question of law, or with the leave of the Court, on any other grounds.

**Note—**

See also section 84 (Practice and procedure for appeals to courts under this Act).

- (2) An appeal under this Part is to be instituted—
  - (a) in the case of an ancillary or interlocutory decision of the Tribunal—within the period ending 28 days after the relevant decision has been made, or
  - (b) in any other case—within the period ending 28 days after the day on which the written statement of reasons for the decision is given to the person seeking to appeal, or

(c) within such further time as the Supreme Court may, in any case, allow.

(3) The Supreme Court in an appeal under this Part may—

(a) decide to deal with the appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and

(b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance, to be given in the new hearing as it considers appropriate in the circumstances.

(4) In determining an appeal, the Supreme Court may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following—

(a) the decision under appeal to be confirmed, affirmed or varied,

(b) the decision under appeal to be quashed or set aside,

(c) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,

(d) the whole or any part of the case to be reconsidered by the Tribunal at first instance, either with or without further evidence, in accordance with the directions of the Supreme Court.

(5) Subject to any interlocutory order made by the Supreme Court, an appeal to the Supreme Court operates to stay the decision under appeal.

## **Schedule 7 Examples of procedural rule-making powers**

(Sections 25(2) and 90(2)(a))

- 1** The time and manner for making applications or lodging appeals.
- 2** The parties to proceedings in the Tribunal (including the joinder, misjoinder and non-joinder of parties and rights of intervention of third parties such as Ministers in proceedings).
- 3** The representation of parties by Australian legal practitioners or other persons (including when leave should be refused or granted for a person to represent a party and the circumstances when the Tribunal may appoint a person to represent a party).
- 4** The selection, use and functions of friends of the Tribunal with respect to the presentation of cases before the Tribunal.
- 5** The circumstances in which proceedings may be heard ex parte or in which a default decision of the Tribunal may be obtained.
- 6** The rights and obligations of parties, prospective parties and other persons to obtain access to information, documents or things in relation to proceedings or prospective proceedings in the

Tribunal.

- 7** The service, giving or lodgment of notices and other documents, including for the purposes of the [Administrative Decisions Review Act 1997](#).
- 8** The splitting and consolidation of proceedings in the Tribunal.
- 9** The admission and exclusion of evidence and the manner in which evidence is to be tendered.
- 10** The transcribing or other recording of proceedings in the Tribunal.
- 11** The appointment, use and functions of assessors in connection with proceedings in the Tribunal.
- 12** The review by the Tribunal of decisions made by registrars (including by way of internal appeals).
- 13** The means for, and the practice and procedure to be followed in, the enforcement and execution of decisions of the Tribunal.
- 14** The means for, and the practice and procedure to be followed in, securing the future conduct of parties to proceedings in the Tribunal.
- 15** The circumstances in which the Tribunal may vary or set aside its orders and other decisions.
- 16** The means for proving particular facts, and the mode in which evidence may be given (including the administration of oaths or affirmations to and the taking of the evidence of witnesses in or out of New South Wales), in relation to proceedings in the Tribunal.
- 17** The use of expert evidence, including—
  - (a) the disclosure (by the furnishing of copies of reports or otherwise) of the nature of expert evidence to be given, and including the exclusion of expert evidence in cases of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence, and
  - (b) the use of expert witnesses including, in particular, the use of expert witnesses engaged jointly by parties to proceedings and the use of Tribunal-appointed expert witnesses.
- 18** The cases in which security may be required, and the form of such security, and the manner in which, and the person to whom, it is to be given.
- 19** The means for notifying the parties to proceedings of decisions of, or other action taken by, the Tribunal in the proceedings.
- 20** The costs in proceedings in the Tribunal (but not including any matter relating to costs that is regulated by the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#))).
- 21** The determination of the seniority of members in connection with the exercise of the functions of the Tribunal in proceedings.
- 22** The circumstances for the use of resolution processes in proceedings.
- 23** The specification of exceptions, limitations or other restrictions in relation to a provision of this Act

that is expressed to be subject to the procedural rules.